

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CONTRACT APPEALS BOARD



MARC D. LOUD, SR.  
CHIEF ADMINISTRATIVE JUDGE

February 15, 2017

The Honorable Phil Mendelson, Chairman  
Council of the District of Columbia  
Committee of the Whole  
The John A. Wilson Building  
1350 Pennsylvania Avenue, NW, Suite 504  
Washington, DC 20004

Dear Chairman Mendelson:

In response to your letter dated January 25, 2017, please find herein the DC Contract Appeals Board's responses to the Committee of the Whole's preliminary questions for the March 15, 2017, FY16 (and FY17 to date), performance oversight hearing. Per your request, I have submitted both a hard copy and electronic copy of responses, and attachments have been avoided except where specifically requested.

Please contact me at (202) 727-6597 if I can be of additional assistance regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc D. Loud, Sr.", with a large, stylized flourish at the end.

Marc D. Loud, Sr.  
Chief Administrative Judge  
DC Contract Appeals Board



## DC CONTRACT APPEALS BOARD RESPONSES

1. Please provide, as an attachment to your answers, a current organizational chart for your agency with the number of vacant and filled FTEs marked in each box. Include the names of all senior personnel, if applicable. Also include the effective date on the chart.

**Response:** Please see Attachment 1.

2. Please provide, as an attachment, a Schedule A for your agency which identifies all employees by title/position, current salary, fringe benefits, and program office as of January 31, 2017. The Schedule A also should indicate all vacant positions in the agency. Please do not include Social Security numbers.

**Response:** Please see Attachment 2.

3. Please list all employees detailed to or from your agency, if any. For each employee identified, please provide the name of the agency the employee is detailed to or from, the reason for the detail, the date of the detail, and the employee's projected date of return.

**Response:** Not applicable.

4. (a) For fiscal year 2016, please list each employee whose salary was \$110,000 or more. For each employee listed provide the name, position title, salary, and amount of any overtime and/or bonus pay.

(b) For fiscal year 2017, please list each employee whose salary is or was \$110,000 or more. For each employee listed provide the name, position title, salary, and amount of any overtime and/or bonus pay as of the date of your response.

**Response:** Please see the table below. The Board did not pay overtime/bonus pay to any employees in FY2016 or FY2017 to date.

Year	Name	Position/Title	Salary
FY2016	Marc D. Loud, Sr.	Chief Administrative Judge	\$172,921
	Monica C. Parchment	Administrative Judge	\$170,536
	Maxine E. McBean	Administrative Judge	\$170,536
	Mark Poindexter	General Counsel	\$123,088
	Andrew Smith (resigned 12/2015)	Attorney Advisor	\$124,906
	Thane Tuttle	Attorney Advisor/CC	\$120,200
FY2017	Marc D. Loud, Sr.	Chief Administrative Judge	\$178,109
	Monica C. Parchment	Administrative Judge	\$175,652
	Maxine E. McBean	Administrative Judge	\$175,652
	Jason Edwards	Attorney Advisor	\$115,895
	Giovanna Jean-Baptiste	Attorney Advisor	\$112,155
	Mark Poindexter	General Counsel	\$140,727
	Thane Tuttle	Attorney Advisor/CC	\$123,805

5. Please list, in descending order, the top 25 overtime earners in your agency for fiscal year 2016. For each, state the employee's name, position or title, salary, and aggregate overtime pay.

**Response:** Not applicable.

6. For fiscal years 2016 and 2017 (to date), please provide a list of employee bonuses or special award pay granted that identifies the employee receiving the bonus or special pay, the amount received, and the reason for the bonus or special pay.

**Response:** Not applicable.

7. For fiscal years 2016 and 2017 (to date), please list each employee separated from the agency with separation pay. State the amount and number of weeks of pay. Also, for each, state the reason for the separation.

**Response:** CAB Attorney Advisor Andrew Smith resigned from his position, effective December 23, 2015, and received 20 hours of annual leave pay-out in the amount of \$701.39 (net of taxes).

8. For fiscal years 2016 and 2017 (to date), please state the total number of employees receiving worker's compensation payments.

**Response:** Not applicable.

9. Please provide the name of each employee who was or is on administrative leave in fiscal years 2016 and 2017 (to date). In addition, for each employee identified, please provide: (1) their position; (2) a brief description of the reason they were placed on leave; (3) the dates they were/are on administrative leave; (4) whether the leave was/is paid or unpaid; and (5) their current status (as of January 31, 2017).

**Response:** Not applicable.

10. How many grievances have been filed by labor unions against agency management? Please list each of them by year for fiscal years 2014, 2015, 2016, and 2017 (to date). Give a brief description of each grievance, and the outcome as of January 31, 2017.

**Response:** Not applicable.

11. For fiscal years 2016 and 2017 (to date), please list, in chronological order, all intra-District transfers to or from the agency.

**Response:** Not applicable.

12. Please list, in chronological order, every reprogramming of funds into and out of the agency for fiscal years 2016 and 2017 (to date). Include a "bottom line" that explains the revised final budget for your agency. For each reprogramming, list the reprogramming number, the date, the amount, and the rationale.

**Response:** Not applicable.

13. Please list, in chronological order, every reprogramming within your agency during fiscal year 2017 to date. Also, include known, anticipated intraagency reprogrammings. For each, give the date, amount, and rationale.

**Response:** The Board has not reprogrammed any funds within our agency in fiscal year 2017 to date. To the extent that the Board anticipates intra-agency reprogrammings in fiscal year 2017, we will supplement our answer promptly.

14. For fiscal years 2016 and 2017 (to date), please identify any special purpose revenue funds maintained by, used by, or available for use by your agency. For each fund identified, provide: (1) the revenue source name and code; (2) the source of funding; (3) a description of the program that generates the funds; (4) the amount of funds generated annually by each source or program; and (5) expenditures of funds, including the purpose of each expenditure. For (4) and (5) provide specific data for fiscal years 2015, 2016, and 2017 (as of January 31, 2017).

**Response:** Not applicable.

15. Please provide a table showing your agency Council-approved original budget, revised budget (after reprogrammings, etc.), and actual spending, by program, for fiscal years 2015, 2016, and the first quarter of 2017. In addition, please explain the variances between fiscal year appropriations and actual expenditures for fiscal years 2015 and 2016.

**Response:** Please refer to the spreadsheets below. The FY2015 and FY2016 variances in appropriations and actual expenditures were primarily due to vacancy savings, with NPS constituting the remainder.

CAB FY15 Budget by Program					
Program	CSG	Comptroller Source Group Title	Original Budget	Revised Budget	Expenditures
<b>1000 - CONTRACT APPEALS BOARD</b>					
<b>0100 LOCAL FUND</b>					
	0012	REGULAR PAY - OTHER	\$162,995	\$162,995	\$168,292
	0013	ADDITIONAL GROSS PAY	\$0	\$0	(\$976)
	0014	FRINGE BENEFITS - CURR PERSONNEL	\$34,718	\$34,718	\$27,055
<b>PERSONNEL SERVICES</b>			<b>\$197,713</b>	<b>\$197,713</b>	<b>\$194,371</b>
	0040	OTHER SERVICES AND CHARGES	\$10,000	\$10,000	\$113
<b>NON-PERSONNEL SERVICES</b>			<b>\$10,000</b>	<b>\$10,000</b>	<b>\$113</b>
<b>0100 LOCAL FUND</b>					
<b>1000 - CONTRACT APPEALS BOARD</b>			<b>\$207,713</b>	<b>\$207,713</b>	<b>\$194,483</b>
<b>2000 - ADJUDICATION</b>					
<b>0100 LOCAL FUND</b>					
<b>PERSONNEL SERVICES</b>					
	0011	REGULAR PAY - CONT FULL TIME	\$594,881	\$514,881	\$429,601
	0012	REGULAR PAY - OTHER	\$361,932	\$361,932	\$395,384
	0013	ADDITIONAL GROSS PAY	\$0	\$0	\$8,973
	0014	FRINGE BENEFITS - CURR PERSONNEL	\$202,977	\$154,194	\$129,813
<b>PERSONNEL SERVICES</b>			<b>\$1,159,789</b>	<b>\$1,031,006</b>	<b>\$963,771</b>
<b>NON-PERSONNEL SERVICES</b>					
	0020	SUPPLIES AND MATERIALS	\$12,600	\$12,600	\$12,407
	0031	TELEPHONE, TELEGRAPH, TELEGRAM, ETC	\$7,704	\$7,704	\$1,638
	0040	OTHER SERVICES AND CHARGES	\$15,192	\$15,192	\$15,183
	0041	CONTRACTUAL SERVICES - OTHER	\$13,100	\$13,100	\$6,435
	0070	EQUIPMENT & EQUIPMENT RENTAL	\$10,000	\$10,000	\$7,300
<b>NON-PERSONNEL SERVICES</b>			<b>\$58,596</b>	<b>\$58,596</b>	<b>\$42,962</b>
<b>0100 LOCAL FUND</b>			<b>\$1,218,385</b>	<b>\$1,089,602</b>	<b>\$1,006,733</b>
<b>2000 - ADJUDICATION</b>					
<b>0100 LOCAL FUND</b>					
<b>CONTRACT APPEALS BOARD</b>			<b>\$1,426,098</b>	<b>\$1,297,315</b>	<b>\$1,201,217</b>

CAB FY16 Budget by Program					
Program	CSG	Comptroller Source Group Title	Original Budget	Revised Budget	Expenditures
<b>1000 - CONTRACT APPEALS BOARD</b>					
<b>0100 LOCAL FUND</b>					
PERSONNEL SERVICES	0011	REGULAR PAY - CONT FULL TIME	\$123,600	\$123,600	\$120,000
	0012	REGULAR PAY - OTHER	\$172,921	\$172,921	\$173,830
	0014	FRINGE BENEFITS - CURR PERSONNEL	\$52,484	\$52,484	\$28,492
<b>PERSONNEL SERVICES</b>			<b>\$349,005</b>	<b>\$349,005</b>	<b>\$322,323</b>
	0040	OTHER SERVICES AND CHARGES	\$9,194	\$9,194	\$194
<b>NON-PERSONNEL SERVICES</b>			<b>\$9,194</b>	<b>\$9,194</b>	<b>\$194</b>
<b>0100 LOCAL FUND</b>			<b>\$358,200</b>	<b>\$358,200</b>	<b>\$322,517</b>
<b>2000 - ADJUDICATION</b>					
<b>0100 LOCAL FUND</b>			<b>\$358,200</b>	<b>\$358,200</b>	<b>\$322,517</b>
<b>0100 LOCAL FUND</b>					
PERSONNEL SERVICES	0011	REGULAR PAY - CONT FULL TIME	\$484,515	\$484,515	\$480,445
	0012	REGULAR PAY - OTHER	\$382,791	\$382,791	\$375,530
	0013	ADDITIONAL GROSS PAY	\$0	\$0	\$1,201
	0014	FRINGE BENEFITS - CURR PERSONNEL	\$153,513	\$153,513	\$143,606
<b>PERSONNEL SERVICES</b>			<b>\$1,020,819</b>	<b>\$1,020,819</b>	<b>\$1,000,782</b>
NON-PERSONNEL SERVICES	0020	SUPPLIES AND MATERIALS	\$8,500	\$8,500	\$3,960
	0031	TELEPHONE, TELEGRAPH, TELEGRAM, ETC	\$9,000	\$9,000	\$315
	0040	OTHER SERVICES AND CHARGES	\$15,306	\$15,306	\$28,330
	0041	CONTRACTUAL SERVICES - OTHER	\$24,623	\$24,623	\$13,867
	0070	EQUIPMENT & EQUIPMENT RENTAL	\$12,660	\$12,660	\$7,906
<b>NON-PERSONNEL SERVICES</b>			<b>\$70,089</b>	<b>\$70,089</b>	<b>\$54,378</b>
<b>0100 LOCAL FUND</b>			<b>\$1,090,907</b>	<b>\$1,090,907</b>	<b>\$1,055,160</b>
<b>2000 - ADJUDICATION</b>					
<b>0100 LOCAL FUND</b>			<b>\$1,090,907</b>	<b>\$1,090,907</b>	<b>\$1,055,160</b>
<b>CONTRACT APPEALS BOARD</b>					
			<b>\$1,449,107</b>	<b>\$1,449,107</b>	<b>\$1,377,677</b>

CAB FY17 YTD Budget by Program					
Object Category	CSG	Comptroller Source Group Title	Original Budget	Revised Budget	Expenditures
<b>1000 - CONTRACT APPEALS BOARD</b>					
<b>0100 LOCAL FUND</b>					
PERSONNEL SERVICES	0012	REGULAR PAY - OTHER	\$178,109	\$178,109	\$60,171
	0014	FRINGE BENEFITS - CURR PERSONNEL	\$32,772	\$32,772	\$9,853
<b>PERSONNEL SERVICES</b>			<b>\$210,881</b>	<b>\$210,881</b>	<b>\$70,024</b>
	0040	OTHER SERVICES AND CHARGES	\$9,131	\$9,131	\$0
<b>NON-PERSONNEL SERVICES</b>			<b>\$9,131</b>	<b>\$9,131</b>	<b>\$0</b>
<b>0100 LOCAL FUND</b>			<b>\$220,013</b>	<b>\$220,013</b>	<b>\$70,024</b>
<b>2000 - ADJUDICATION</b>					
<b>0100 LOCAL FUND</b>			<b>\$220,013</b>	<b>\$220,013</b>	<b>\$70,024</b>
<b>0100 LOCAL FUND</b>					
PERSONNEL SERVICES	0011	REGULAR PAY - CONT FULL TIME	\$668,458	\$668,458	\$228,945
	0012	REGULAR PAY - OTHER	\$351,305	\$351,305	\$118,682
	0014	FRINGE BENEFITS - CURR PERSONNEL	\$187,637	\$187,637	\$51,960
<b>PERSONNEL SERVICES</b>			<b>\$1,207,400</b>	<b>\$1,207,400</b>	<b>\$399,587</b>
NON-PERSONNEL SERVICES	0020	SUPPLIES AND MATERIALS	\$10,110	\$10,110	\$0
	0031	TELEPHONE, TELEGRAPH, TELEGRAM, ETC	\$9,000	\$9,000	\$0
	0040	OTHER SERVICES AND CHARGES	\$15,868	\$15,868	\$4,319
	0041	CONTRACTUAL SERVICES - OTHER	\$25,000	\$25,000	\$10,665
	0070	EQUIPMENT & EQUIPMENT RENTAL	\$5,000	\$5,000	\$0
<b>NON-PERSONNEL SERVICES</b>			<b>\$64,978</b>	<b>\$64,978</b>	<b>\$14,984</b>
<b>0100 LOCAL FUND</b>			<b>\$1,272,379</b>	<b>\$1,272,379</b>	<b>\$414,570</b>
<b>2000 - ADJUDICATION</b>					
<b>0100 LOCAL FUND</b>			<b>\$1,272,379</b>	<b>\$1,272,379</b>	<b>\$414,570</b>
<b>CONTRACT APPEALS BOARD</b>					
			<b>\$1,492,391</b>	<b>\$1,492,391</b>	<b>\$484,594</b>

16. Please list all memoranda of understanding (MOU) either entered into by your agency or in effect during fiscal years 2016 and 2017 (to date). For each, describe its purpose, indicate the date entered, and provide the actual or anticipated termination date.

**Response:** Pursuant to D.C. Official Code § 2-360.03(b), the Board has statutory authority to enter into fee-for-service agreements to resolve contract disputes and bid protests for District agencies or other public entities exempt from our jurisdiction. In this regard, MOUs were in effect in FY2016 with the Washington Convention and Sports Authority (WCSA) (entered into on January 5, 2010), the District of Columbia Health Benefit Exchange Authority (HBEA) (entered into on June 23, 2015) and the District Department of Energy and Environment (DOEE) (entered into on August 19, 2015). In FY2017, the WCSA MOU is continuing, and the DOEE and HBEA MOUs were renewed through September 30, 2017.

17. D.C. Law requires the Mayor and the Chief Financial Officer to submit to the Council, simultaneously with a proposed budget submission, actual copies of all agency budget enhancements requests, including the "Form B" for all District agencies (See D.C. Code § 47-318.05a). In order to help the Committee understand agency needs, and the cost of those needs for your agency, please provide, as an attachment to your answers, all budget

enhancement requests submitted by your agency to the Mayor or Chief Financial Officer as part of the budget process for fiscal years 2016 and 2017.

**Response:** Not applicable.

18. Please list each grant or sub-grant received by your agency in fiscal years 2016 and 2017 (to date). Include multi-year grants. List the date, amount, purpose of the grant or sub-grant received, and explain how the grant is allocated if it is a multi-year grant.

**Response:** Not applicable.

19. Please describe every grant your agency is, or is considering, applying for this fiscal year.

**Response:** Not applicable.

20. Please list all currently open capital projects for your agency as of the date of your response, including those projects that are managed or overseen by another agency or entity. Include a brief description of each, the total estimated cost, expenditures to date, the start and completion dates, and the current status of the project. Also, indicate which projects are experiencing delays and which require additional funding.

**Response:** Not applicable.

21. Please list all pending lawsuits that name your agency as a party. Please identify which cases on the list are lawsuits that potentially expose the city to significant liability in terms of money and/or change in practices. The Committee is not asking for your judgment as to the city's liability; rather, we are asking about the extent of the claim. For those claims identified, please include an explanation about the issues for each case.

**Response:** Not applicable.

22. (a) Please list and describe any investigations, studies, audits, or reports on your agency or any employee of your agency that were completed at any time in fiscal years 2016 or 2017 (to date).

**Response:** Not applicable.

- (b) Please list and describe any ongoing investigations, audits, or reports of your agency or any employee of your agency.

**Response:** Not applicable.

23. Please list, in chronological order, all employee grievances filed against your agency in fiscal years 2016 and 2017 (to date). Include on the chronological list any earlier grievance that is still pending in any judicial forum. For each, give a brief description of the matter as well as the current status. If the entirety of your answer was covered by question no. 10, indicate that here and do not repeat the answer.

**Response:** None.

24. In table format, please list the following for fiscal years 2016 and 2017 (through January 31, 2017) regarding the agency's use of SmartPay (credit) cards for agency purchases: (1) individuals (by name and title/position) authorized to use the cards; (2) purchase limits (per person, per day, etc.); and (3) total spent (by person and for the agency).

**Response:** The following table is based upon transaction posting dates by the P-Card issuing bank, JP Morgan Chase. The FY2017 data is current through January 31, 2017. Uday Berry, Program Assistant, and Mark Poindexter, General Counsel, are currently authorized P-Card users.

Fiscal Year	Authorized User	Single Purchase Limit	Daily Limit	Monthly Limit	Total
FY2016	Uday Berry	\$5,000	N/A	\$20,000	\$40,193.47
FY2016	Mark Poindexter	\$5,000	N/A	\$20,000	\$169.04
FY2017	Uday Berry	\$5,000	N/A	\$20,000	\$9,337.10
FY2017	Mark Poindexter	\$5,000	N/A	\$20,000	\$0

25. Please provide a list of all procurements for goods or services for use by your agency over \$10,000 for fiscal years 2016 and 2017 (to date). Give a brief explanation of each, including the name of the contractor, purpose of the contract, and the total dollar amount of the contract. Exclude from this answer purchase card (SmartPay) purchases.

**Response:** Not applicable.

26. (a) Please describe how your agency manages and limits its mobile, voice, and data costs, including cellular phones and mobile devices.

**Response:** The CAB Appeals Clerk also serves as the Board's Agency Telecommunications Coordinator (ATC), and in this capacity provides reports to the Chief Administrative Judge on any Board employee exceeding the monthly usage ceiling set by the telecommunications plan. For fiscal years 2016 and 2017 (through December 2016) the Board has been in compliance with monthly plan usage fees.

- (b) In table format, please provide the following information for fiscal years 2016 and 2017 (to date), regarding your agency's use of cellular phones and mobile devices: (1) individuals (by name and title/position) authorized to carry and use such devices; (2) total annual expense (FY) for each individual's use; and (3) justification for such use (per person). If the list is more than one page in length, you may provide it as an attachment.

**Response:** Please see table below.

Staff Member	Position	FY2016 Costs	FY2017 Costs (through 12/2016)	Justification
Marc Loud, Sr.	Chief Administrative Judge	\$644.93	\$144.09	Critical Contact
Maxine McBean	Administrative Judge	\$1130.73	\$332.89	Critical Contact
Monica Parchment	Administrative Judge	\$686.59	\$161.70	Critical Contact
Jason Edwards	Attorney Advisor	\$729.15	\$144.09	Critical Contact
Mia House	Appeals Clerk-ATC	\$637.93	\$144.09	Critical Contact
Mark Poindexter	General Counsel	\$729.15	\$144.09	Critical Contact
Andrew Smith	Attorney Advisor	\$729.15	\$144.09	Critical Contact
Thane Tuttle	Clerk of Court	\$637.93	\$144.09	Critical Contact
Albert Wilcox	Protest Clerk - IT Support	\$637.93	\$144.09	Critical Contact

27. (a) Does your agency have or use one or more government vehicle? If so, for fiscal years 2016 and 2017 (to date), please list any vehicle the agency owns, leases, or has assigned to it. You may group the vehicles by category (e.g., 15 sedans, 33 pick-up trucks, three transport buses, etc.).

**Response:** Not applicable.

(b) Please list all vehicle accidents involving your agency's vehicles for fiscal years 2015, 2016, and 2017 (to date). Provide: (1) a brief description of each accident; (2) the type of vehicle involved; (3) the justification for using such vehicle; (4) the name and title/position of the driver involved; and (5) whether there was a finding of fault and, if so, who was determined to be at fault.

**Response:** Not applicable.

28. D.C. Law requires the Mayor to pay certain settlements from agency operating budgets if the settlement is less than \$10,000 or results from an incident within the last two years (see D.C. Code § 2-402(a)(3)). Please itemize each charge-back to your agency for a settlement or judgment pursuant to D.C. Code § 2-402.

**Response:** Not applicable.

29. (a) D.C. Law prohibits chauffeurs, take-home vehicles, and the use of SUVs (see D.C. Code §§ 50-203 and 50-204). Is your agency in compliance with this law?

**Response:** Not applicable.

(b) Please explain all exceptions, if any, and provide the following: (1) type of vehicle (make, model, year); (2) individuals (name/position) authorized to have the vehicle; (3) jurisdictional residence of the individual (e.g., Bowie, MD); and (4) justification for the chauffeur or take-home status.

**Response:** Not applicable.

30. In table format, please provide the following information for fiscal years 2016 and 2017 (to date) regarding your agency's authorization of employee travel: (1) individuals (by name and title/position) authorized to travel outside the region; (2) total expense for each trip (per person, per trip, etc.); and (3) justification for the travel (per person and trip).

**Response:** Not applicable.

31. Please provide and itemize, as of January 31, 2017, the current number of When Actually Employed (WAE), term, and contract personnel within your agency. If your agency employs WAE or term personnel, please provide, in table format, the name of each employee, position title, the length of his or her term or contract, the date on which he or she first started with your agency, and the date on which his or her current term expires.

**Response:** The Board currently has one WAE employee, no contract personnel, and no term employees. The Board's sole WAE employee is Norman Menegat, Attorney



Advisor. Mr. Menegat provides extra support with legal research/writing as requested by Board judges. He was first hired on May 19, 2014, and his current term will expire on July 31, 2017.

32. What efforts has your agency made in the past year to increase transparency? Explain.

**Response:** Except for matters subject to protective order due to confidential financial data or trade secrets, etc., the Board posts all pleadings from litigated cases to our website within three days of filing. The Board's website currently includes filings for all digitized Board cases filed between 1985-2017 (to date). The Board also maintains a current calendar of upcoming trials and pre-trial conferences on our website. Finally, the Board posts a hard copy listing of all upcoming trials/pretrials in the hallway directly adjoining our office suite.

33. What efforts will your agency be making to increase transparency? Explain.

**Response:** The Board will continue uploading case files to its website within three days of filing, continue making our trial/pretrial dates available on our website, continue posting a hard copy of upcoming trials/pretrials in the public hallway directly adjacent to our office suite, and taking such other actions as will promote transparency.

34. Please identify any legislative requirements that your agency lacks sufficient resources to properly implement. Explain.

**Response:** Not applicable.

35. Please identify any statutory or regulatory impediments to your agency's operations.

**Response:** There are/were no statutory or regulatory impediments to the Board's operations in FY2016 and FY2017 to date. During FY2018, however, the Board intends to update its rules of practice. Currently, the authority to "issue" rules for Title X of the Act (i.e., the provisions of the Act relating to the Board) could be interpreted to rest with the Chief Procurement Officer (see Act, Section 1106(a)(1)). The Board is currently working within the budgetary process to effectuate such changes to the law as are necessary to authorize the Board to update and issue its rules of practice.

36. Did your agency receive any FOIA requests in fiscal year 2016? If yes, did the agency file a report of FOIA disclosure activities with the Secretary of the District of Columbia? If available, please provide a copy of that report as an attachment.

**Response:** The Board received three (3) FOIA requests in fiscal year 2016, all of which were processed consistent with the requirements of the statute. Please see Attachment 3.

37. (a) Please attach copies of the required annual small business enterprise (SBE) expenditure reports for your agency for fiscal years 2015 and 2016.

**Response:** Please see Attachment 4 (FY2015 Department of Small and Local Business Development ("DSLBD") Expenditure Report). DSLBD has advised that it is awaiting final, FY2016 purchasing data from the OCFO. As a result, the FY2016 DSLBD Expenditure Report is pending.

According to the Board’s internal records, however, our FY 2016 SBE expenditures totaled \$22,842.71, exceeding our revised FY2016 SBE expenditure goal of \$12,475 by \$10,367.71 or approximately 83%. The Board is required to spend \$16,886.44 with SBEs in FY 2017 and, through the first quarter of FY2017, has spent \$5,548.38 or approximately 33% towards that goal. The Board’s Spending Plan for its FY 2017 expendable budget has been submitted to DSLBD and emphasizes anticipated SBE expenditures relating to Office Supplies, Contractual Services and Equipment/Machinery.

(b) D.C. Official Code § 2-218.53(b) requires each District agency to submit supplemental information with their annual SBE expenditure report, including: a description of the activities the agency engaged in to achieve their fiscal year SBE expenditure goal; and a description of any changes the agency intends to make during the next fiscal year to achieve their SBE expenditure goal. Has your agency submitted the required information for fiscal year 2016? Please provide a copy as an attachment.

**Response:** Please see Attachment 5. DSLBD has advised that it is awaiting final, FY2016 purchasing data from the OCFO. As a result, the Board’s FY2016 narrative is pending. Please refer to the Board’s response to Question 37(a) for additional information regarding its FY2016 and FY2017 SBE expenditures.

38. Please provide, as an attachment, a copy of your agency’s current annual performance plan as submitted to the Office of the City Administrator.

**Response:** Please see Attachment 6.

39. What are your agency’s key performance indicators and what has been your agency’s performance (per these KPIs) in fiscal year (or calendar year) 2015, 2016, and 2017 (through the first quarter).

**Response:** The Board’s KPI’s are maintained and reported on an annual, fiscal year basis. Please see the table below.

KPI	FY 2015 Target	FY 2015 Actual	FY 2016 Target	FY2016 Actual	FY 2017 Projection
1) Percentage of protests resolved within 60 business days.	95%	91%	95%	83%	95%
2) Percentage of appeals cases decided within 4 months of the case being ready for decision.	90%	73%	90%	92%	90%
3) Percentage of new cases using electronic filing system.	100%	100%	100%	100%	100%
4) Percentage of decisions sustained on appeal.	100%	100%	100%	N/A <sup>1</sup>	100%
5) Percentage of cases closed by the Board in the current fiscal year that are electronically archived to permit web-based retrieval and full-text searching capability.	100%	100%	100%	100%	100%

<sup>1</sup>Excludes one pending case which was affirmed in part and reversed in part by a panel of the DC Court of Appeals in FY16.

KPI	FY 2015 Target	FY 2015 Actual	FY 2016 Target	FY2016 Actual	FY 2017 Projection
6) Percentage of pending cases that are 3 years old or less.	100%	72%	85%	75% <sup>2</sup>	90%
7) Percentage of cases resolved through settlement. <sup>3</sup>	N/A	N/A	30%	73%	50%

40. What KPIs have been dropped (or changed) since 2014? List each specifically and explain why it was dropped or changed.

**Response:** While the pending case target was adjusted to better reflect incremental progress and goals, the Board has not dropped or changed its KPIs since 2014. As part of its broader initiative relating to expanding the use of Alternative Dispute Resolution in its cases, in FY16-17 the Board added an additional KPI to track cases ultimately resolved through settlement or other voluntary resolution actions.

41. What are your top five priorities for the agency? Please provide a detailed explanation for how the agency expects to achieve or work toward these priorities in fiscal years 2017 and 2018.

**Response:** For the past several years, the Board has identified roughly the same “top five” priorities for each year, and usually in the same order (Eliminate Legacy Backlog/Prevent Occurrence of New Backlog, Reach 100% Compliance Rate for Closing Protests Within 60 days, Promoting Transparency Through Displaying All Records/Cases on Our Website, Review/Update CAB Technology Needs, and Encourage Mediation/Settlement). The Board believes that if we continue to focus on these five priorities each year, we will continuously fulfill our mission and optimize service to our stakeholders.

Thus, the Board’s top five priorities will not change in FY17/18. What will change, however, is the order of priority. For the first time in the last several years, the Board has now fully eliminated its legacy backlog. As a result, we are now moving this from the Board’s number “1” priority to priority number “5” (and as such, the emphasis will shift to preventing the reoccurrence of a new backlog, and rules update). With respect to the Board’s other listed priorities, we will continue to list them as guideposts for the prioritization of staff and other resources in FY17/FY18. Accordingly, what follows is the Board’s updated listing of five top priorities for FY17/18:

**1. Continue The Mission Of Displaying All Board Case Records On The Public Website, Including Full Digital Conversion of the Board’s Closed Files.**

One of the Board’s several strengths and a continuing top priority is transparency. In that regard, the Board has been praised by the Washington Business Journal (WBJ) for having

<sup>2</sup> As of today’s date the percentage of cases that are three years old or less is 83%.

<sup>3</sup>Settlement refers to those cases: (1) withdrawn by the protester/appellant; (2) jointly dismissed by the parties; or (3) dismissed after the District takes voluntary corrective action, including cancellation of the solicitation/award.

“the most transparent database” of any government agency covered by the WBJ.<sup>4</sup> In FY17/18, the Board will continue the prompt display of all material filed in pending and closed cases (not subject to protective order) to the Board’s website for public display. We discuss briefly below the two types of case records (pending and closed files) that are uploaded to the Board’s public website.

*Display of Pending Case Files on Public Website.* In FY2016, parties submitted 1,783 pleadings, motions, or other materials with the Board totaling 35,737 pages of material. One of the Board’s top priorities is to ensure that all filings made in open cases are uploaded to the public website within three business days of filing. For FY2016 and FY2017 to date, all filed materials (except materials filed under protective order) were successfully uploaded to the public website. In order to maintain a successful level of performance, the Board’s Appeal and Protest Clerks are tasked with uploading all new case materials within three business days of filing. The Clerks prepare a monthly “uploads” report, which is reviewed by the Chief Judge. The table below includes total filings and total pages filed with the Board from FY2013-FY2016:

FY2013	FY2014	FY2015	FY2016
1,764 Filings 33,920 Pages	1,361 Filings 28,821 Pages	728 Filings 22,157 Pages	1,783 Filings 35,737 Pages

*Closed Files.* In addition to filings made in “pending” cases, the Board has “closed” cases consisting entirely of paper filings. All of these cases predate the digital era, and digital conversion and archiving of these cases will provide for better preservation and retrieval than paper records. Once digitized, these files can be imported into the Board’s document management system and then uploaded to the public website. One of the Board’s top priorities, therefore, is to ensure that all hard copy case files are digitized and uploaded. From its founding in 1953 through the end of FY2016, 2,538 cases have been filed with the Board. To date, the Board has uploaded complete records for 1,621 cases to its website, including all digitized cases from 1985-2017 (to date). One of the Board’s top priorities is to ensure that the remaining 884 hard copy case files are digitized and uploaded. During FY2017-FY2018, the Board has prioritized completion of a multiyear plan for the digitization of all remaining CAB case records, including identifying resource needs as pertains to budget, existing staff, and/or contract personnel. In addition, CAB will continue to inventory, scan, convert, and upload pre-digital age files within authorized funding levels.

**2. Increase The Board’s Compliance Rate To 100% For Closing Protest Cases Within 60 Business Days Of Filing.**

The Board has always prioritized closing protest cases within 60 business days of filing, and is under a statutory mandate to do so. D.C. Official Code § 2-360.08(d). In FY2016, the Board closed 83% of protests within the 60 day timeline. While a number of factors may impact case turnaround times (e.g., Motions for Continuance, general Motions Practice, multi-party protests, etc.), the Board will continue to increase performance in this area until 100% compliance is reached. In this regard, the Board conducts case accountability meetings monthly to remain on track with processing deadlines.

<sup>4</sup> Michael Neibauer, *D.C. Contract Appeals Board Tackles Backlog*, WASHINGTON BUSINESS JOURNAL, Nov. 11, 2011, at BizBeat.

### **3. Review And Update CAB's Technology Needs And Best Practices For Courtroom Database Management Software.**

The Board uses Worksite Server to store all litigation case records, and populates case data from WorkSite Server to the public website through FileSite. In addition, the Board accesses its e-file and serve program (File & ServeXpress) to obtain several basic types of reports (total motions, orders, dismissals *etc.*) filed within a defined period, total number of filings made in a particular case (*e.g.*, Motions To Extend), and other metrics. However, the Board currently lacks the capacity to create recurrent Order templates, or to conduct management level queries of integrated data-sets. For example, much of the data appearing in various tables in this report was obtained manually through the review and compilation of information appearing in several disparate Board reports.

Efforts in previous years to review best practice options for acquiring a relational database suitable for the Board's needs were hampered by lack of staff resources or emerging issues. Thus in FY2016 the Board replaced its aging printer, and (continuing through FY2017) worked with representatives of OCTO and DC-Net to migrate its data server to OCTO's Enterprise Cloud Infrastructure System (ECIS). We will continue to work with OCTO/DC Net to fully implement our server migration, and as staff resources permit engage in on-going assessment of technology needs for the Board.

### **4. Research Issues Pertaining To, And Best Practices Regarding The Implementation Of, A Best In Class CAB Alternative Dispute Resolution/Mediation Program.**

The use of mediation and other alternative dispute resolution techniques have increasingly proven to be important tools in the effective and efficient disposition of disputes. Matters that would ordinarily take months or years to resolve through traditional litigation models, can be resolved in a fraction of the time (and often with far greater party satisfaction and buy-in) through the use of alternative dispute resolution. Indeed, at the inception of each case, the Board encourages mediation/settlement through its Scheduling Orders, and continues to encourage mediation/settlement through the pretrial phase of proceedings.

The Board had an excellent record of case settlement in FY16 (73%), and intends to continue identifying factors which contribute to settlement between the parties. We will continue to research models for developing a "best in class" ADR program. In this regard, the Board will continue to confer with key stakeholders, and to review best practices across a wide spectrum of knowledge experts.

### **5. Final Closure Has Been Brought to Legacy Backlog Appeals; The New Priority Will Be Preventing The Occurrence Of Future Case Backlogs and Updating CAB Rules.**

The Board's caseload consists largely of two, distinct types of cases: **protests** (*i.e.*, adversarial proceedings wherein a disappointed bidder challenges a contract award or solicitation) and **appeals** (*i.e.*, adversarial proceedings generally conducted by hearing wherein either the government or a contractor under an existing contract initiates a claim for damages asserting a breach of contract performance). After several years of

identifying elimination of an appeals docket legacy backlog as a “top priority”, the Board is pleased to inform the Committee that the backlog has been eliminated. The history and elimination of that backlog is noted below.

*History and Definition of Legacy Backlog.* The three current CAB Judges inherited an appeals backlog that developed during the critical period FY2006-FY2010. The Board used the term “legacy backlog” to refer to those appeals cases that became backlogged during FY2006-FY2010. During that period, approximately 50% of the appeals docket (42/85) became either dormant or aged due to (1) a 98% increase in the number of appeals filed; (2) a five-year continuous vacancy in one of the Board’s three judge positions; and (3) the aggregate filing of over 13,000 documents with Board judges.<sup>5</sup>

The table below chronicles the five-year development of the Board’s legacy backlog, and the yellow highlighted section tracks the annual percentage increase in newly filed appeals cases from the benchmark year (*i.e.*, FY2006).

Year	New Appeals	%+FY06	# of CAB Judges	Total# Cases/Yr	Average # Cases Per Judge
FY2005	35	n/a	3	101A/127	42 (including 34 appeals)
FY2006	14	n/a	2	88A/129	64.5 (including 44 appeals)
FY2007	22	60%	2	88A/116	58 (including 44 appeals)
FY2008	30	120%	2	102A/129	64.5 (including 51 appeals)
FY2009	23	63%	2	105A/154	77 (including 53 appeals)
FY2010	35	150%	2	113A/164	82 (including 57 appeals)

With the close of FY2016, the current Board has now eliminated all of the legacy backlog. As of FY2017 (to date), the Board has eliminated 42 of the original 42 backlogged cases (100%). The table below identifies the number of legacy appeals cases eliminated each fiscal year since the appointment of the current Judges:

Fiscal Year	Legacy Cases Closed	Pending Legacy Cases
2010	1	41
2011	11	30
2012	5	25
2013	5	20
2014	17	3
2015	0	3
2016	3	0

*Preventing The Occurrence of Future Backlogs.* Having inherited a huge backlog upon their initial appointments, and having worked assiduously to eliminate it, current Board judges are determined to prevent future backlogs on the appeals docket. To sustain performance sufficient to meet this goal, several multiyear actions have been taken:

- *Stabilizing the Appointment of Board Judges.* Since the close of FY11, there have been no judge vacancies on the Board. This is important to note because the original legacy backlog was caused largely by a five-year continuous vacancy in one of the Board’s three judge positions (FY2006-FY2010). The continuity of appointments and reappointments are vital factors contributing to the Board’s ability to prevent docket backlogs. The Board must acknowledge the Executive Office of the Mayor,

<sup>5</sup> See, e.g., the CAB’s FY2013 and FY2014 to date Performance Hearing responses to the Committee of the Whole’s questions (February 3, 2014, Response No. 25).

the Office of Boards and Commissions, and the Council of the District of Columbia for their hard work stabilizing the Board. Because of the efforts of the aforementioned, the current judges have been seamlessly reappointed between FY2012-FY2016 in such manner as has allowed them to provide uninterrupted service expediting case resolution. We look forward to continued stabilization in the future.

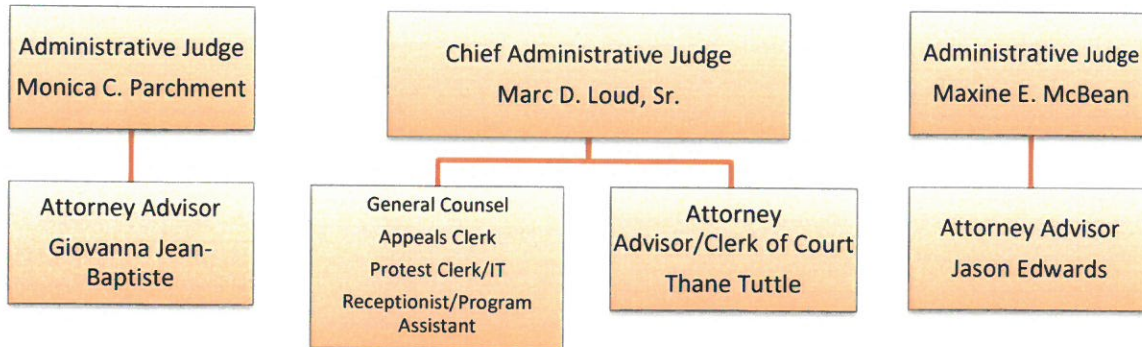
- *Increasing the Number of Budgeted FTE Attorney Positions.* Prior to FY2013, the Board had no budgeted FTE attorney positions to address existing and/or prevent future backlogs. Since FY2013, the Board has worked collaboratively with the Office of the Chief Financial Officer, the Mayor, and the Council of the District of Columbia to create three FTE attorney positions (one added in FY2013 and two added in FY2015). These positions are required to assist judges with the management of the Board's voluminous docket, which included over 35,000 pages of litigation materials filed in FY2016.
- *Rigorous Case Management And Annually Prioritizing The Closure Of All Cases That Are Three Years Or Older.* Finally, preventing the occurrence of any future backlogs will require rigorous case management by Board judges and staff. In this regard, the Board's case management requirements are that (1) Scheduling Orders be issued within 45 days of case filing; (2) that the Scheduling Orders include discovery and motions cut-off deadlines; and (3) that each Scheduling Order include a trial date that is no more than 2.5 years from the date of initial filing. In addition, Board judges manage their dockets each year to prioritize the closure of all cases that are three years (or more) old as a first priority (absent exigent circumstances). Monthly case accountability meetings are held to review progress.

*Rules Update.* Finally, the Board will add as a new priority for FY18, the update of its rules for litigants practicing before the Board. The Board will update the rules within existing resources. Preliminary work will be undertaken in FY17 through existing staff resources, and the Board expects to issue updated rules in FY2018. Related thereto, the Board is seeking exclusive statutory authority to issue its updated rules. Currently, the authority to "issue" rules for Title X of the Act (i.e., the provisions of the Act relating to the Board) could be interpreted to rest with the Chief Procurement Officer (see Act, Section 1106(a)(1)). The Board is currently working within the budgetary process to effectuate such changes to the law as are necessary to authorize the Board to update and issue its rules of practice.



**DC CONTRACT APPEALS BOARD  
FY2016-2017 PERFORMANCE OVERSIGHT RESPONSES**

**ATTACHMENT 1  
DC CONTRACT APPEALS BOARD  
ORGANIZATIONAL CHART  
(Effective February 15, 2017)**







**DC CONTRACT APPEALS BOARD  
FY2016-2017 PERFORMANCE OVERSIGHT RESPONSES**

**ATTACHMENT 2  
CAB SCHEDULE A STAFF LISTING  
(Effective January 31, 2017)**

**AFO - Schedule A as of January 31, 2017**

Title	Vac Stat	Salary	Fringe Benefits	Prgm Code
1 CHIEF ADMIN JUDGE	F	\$ 178,109.04	\$ 32,772.06	1090/Performance Management
2 ADMIN JUDGE	F	\$ 175,652.53	\$ 32,320.07	2001/Adjudication
3 General Counsel	F	\$ 140,727.00	\$ 25,893.77	2001/Adjudication
4 ADMIN JUDGE	F	\$ 175,652.53	\$ 32,320.07	2001/Adjudication
5 STAFF ASSISTANT	F	\$ 71,468.00	\$ 13,150.11	2001/Adjudication
6 Administrative Officer	F	\$ 69,641.00	\$ 12,813.94	2001/Adjudication
7 Clerk of Court	F	\$ 123,805.97	\$ 22,780.30	2001/Adjudication
8 Program Support Assistant	F	\$ 46,998.00	\$ 8,647.63	2001/Adjudication
9 Attorney Advisor	F	\$ 63,468.52	\$ 11,678.21	2001/Adjudication
10 Attorney Advisor	F	\$ 115,895.00	\$ 21,324.68	2001/Adjudication
11 Attorney Advisor	F	\$ 112,155.00	\$ 20,636.52	2001/Adjudication



**DC CONTRACT APPEALS BOARD  
FY2016-2017 PERFORMANCE OVERSIGHT RESPONSES**

**ATTACHMENT 3  
CAB FY2016 FOIA REPORT**

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Agency Name

DC Contract Appeals Board (AF0)

Annual Freedom of Information Act Report for Fiscal Year 2016  
October 1, 2015 through September 30, 2016

FOIA Officer Reporting Mark D. Poindexter, General Counsel

PROCESSING OF FOIA REQUESTS

1. Number of FOIA requests received during reporting period .....	3
2. Number of FOIA requests pending on October 1, 2015.....	0
3. Number of FOIA requests pending on September 30, 2016.....	0
4. The average number of days unfilled requests have been pending before each public body as of September 30, 2016 .....	0

DISPOSITION OF FOIA REQUESTS

5. Number of requests granted, in whole.....	2
6. Number of requests granted, in part, denied, in part.....	0
7. Number of requests denied, in whole.....	0
8. Number of requests withdrawn.....	0
9. Number of requests referred or forwarded to other public bodies.....	0
10. Other disposition .....	1

NUMBER OF REQUESTS THAT RELIED UPON EACH FOIA EXEMPTION

11. Exemption 1 - D.C. Official Code § 2-534(a)(1).....	0
12. Exemption 2 - D.C. Official Code § 2-534(a)(2).....	0
13. Exemption 3 - D.C. Official Code § 2-534(a)(3)	
Subcategory (A).....	0
Subcategory (B).....	0
Subcategory (C) .....	0
Subcategory (D) .....	0
Subcategory (E) .....	0
Subcategory (F) .....	0
14. Exemption 4 - D.C. Official Code § 2-534(a)(4) .....	0
15. Exemption 5 - D.C. Official Code § 2-534(a)(5).....	0

16. Exemption 6 - D.C. Official Code § 2-534(a)(6)	
Subcategory (A).....	0
Subcategory (B).....	0
17. Exemption 7 - D.C. Official Code § 2-534(a)(7).....	0
18. Exemption 8 - D.C. Official Code § 2-534(a)(8).....	0
19. Exemption 9 - D.C. Official Code § 2-534(a)(9).....	0
20. Exemption 10 - D.C. Official Code § 2-534(a)(10).....	0
21. Exemption 11 - D.C. Official Code § 2-534(a)(11).....	0
22. Exemption 12 - D.C. Official Code § 2-534(a)(12).....	0

**TIME-FRAMES FOR PROCESSING FOIA REQUESTS**

23. Number of FOIA requests processed within 15 days.....	2
24. Number of FOIA requests processed between 16 and 25 days.....	1
25. Number of FOIA requests processed in 26 days or more.....	0
26. Median number of days to process FOIA Requests.....	1

**RESOURCES ALLOCATED TO PROCESSING FOIA REQUESTS**

27. Number of staff hours devoted to processing FOIA requests.....	2
28. Total dollar amount expended by public body for processing FOIA requests.....	\$118

**FEEES FOR PROCESSING FOIA REQUESTS**

29. Total amount of fees collected by public body.....	\$0
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**PROSECUTIONS PURSUANT TO SECTION 207(d) OF THE D.C. FOIA**

30. Number of employees found guilty of a misdemeanor for arbitrarily or capriciously violating any provision of the District of Columbia Freedom of Information Act .....	0
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**QUALITATIVE DESCRIPTION OR SUMMARY STATEMENT**

Pursuant to section 208(a)(9) of the D.C. FOIA, provide in the space below or as an attachment, “[a] qualitative description or summary statement, and conclusions drawn from the data regarding compliance [with the provisions of the Act].”

The Board received three (3) FOIA requests during FY2016, and satisfied those requests consistent with the requirements of the statute.



**DC CONTRACT APPEALS BOARD  
FY2016-2017 PERFORMANCE OVERSIGHT RESPONSES**

**ATTACHMENT 4  
CAB FY2015 SBE ANNUAL EXPENDITURE REPORT**

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