

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD



MARC D. LOUD, SR.
CHIEF ADMINISTRATIVE JUDGE

February 21, 2019

The Honorable Robert C. White, Jr., Chairman
Council of the District of Columbia
Committee on Facilities and Procurement
The John A. Wilson Building
1350 Pennsylvania Avenue, NW, Suite 107
Washington, DC 20004

Dear Chairman White:

In response to your letter dated February 1, 2019, please find herein the DC Contract Appeals Board's responses to the Committee on Facilities and Procurement's prehearing questions for the February 27, 2019, FY18 (and FY19 to date) performance oversight hearing. Per your request, I have submitted six hard copies and an 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.", is written over a large, stylized circular flourish.

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



DC CONTRACT APPEALS BOARD RESPONSES

GENERAL QUESTIONS

1. Please provide the agency's mission statement.

Response: The mission of the Contract Appeals Board (CAB) is to provide an impartial, expeditious, inexpensive, and knowledgeable forum for hearing and resolving contractual disputes, protests, Quick Payment Act claims, Public-Private Partnership Act claims, and Debarments and Suspensions involving the District and its contracting communities.

2. Please separately list all reports or reporting currently required of the agency in the District of Columbia Code or Municipal Regulations. Provide a description of whether the agency is in compliance with these requirements, and if not, why not (e.g. the purpose behind the requirement is moot, etc.).

Response: Please see table below. In addition, the Board regularly submits groupings of final decisions to the DC Register. The most recent submission was May 11, 2018. In addition to publishing in the DC Register, however, the Board uploads all case filings (not subject to a Protective Order) to our public website, and publishes final decisions on Westlaw.

Reporting Requirement	Compliance (explanation)
FOIA Report	Yes
Performance Accountability Report	Yes
DSLBD CBE/SBE Spending Reports	Yes (quarterly verification of agency spending information obtained by DSLBD from PASS and SOAR)
EEO Officer/Counselor Reports	Yes
Account Review Team (ART) Reports (PCard)	Yes
Key Performance Measures/Workload Report	Yes
Public and Confidential Financial Disclosure Reports	Yes
Financial Review Process (FRP) Budget Reports	Yes

3. Please describe all regulations promulgated by the agency in FY 18 or FY 19, to date, and the date each was finalized.

Response: Not applicable.

4. Please explain the impact on your agency of any legislation passed at the local or federal level during FY 18 and FY 19, to date, which has significantly affected agency operations.

Response: Not applicable.

5. What are the metrics regularly used by the agency to evaluate its operations? Please be specific about which data points are monitored by the agency.

Response: Please see table below.

Contract Appeals Board Key Performance Measures (KPIs)	
1.	Percentage of protests resolved within 60 business days.
2.	Percentage of pending appeals cases that are 3 years old or less.
3.	Percentage of appeals cases decided within 4 months of the case being ready for decision.
4.	Percentage of new cases using electronic filing system.
5.	Percentage of decisions sustained on appeal.
6.	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.
7.	Percentage of cases resolved through settlement. ¹

6. Please provide a copy of your agency's FY 19 performance plan.

Response: Please see Attachment 1.

7. Please provide a copy of the agency's FY 18 performance plan. Please explain which performance plan objectives were completed in FY 18 and whether they were completed on time and within budget. If they were not, please provide an explanation.

Response: Please see Attachment 2. As an adjudicatory body, the Board's FY18 performance plan objectives prioritize prompt resolution of all existing and newly filed cases (*see, e.g.*, Attachment 2/Strategic Objective 1). In this regard, the Board completed all material FY18 performance plan objectives pertaining to docket-performance. For example, in FY18, the Board closed 91% of protests within the statutorily required 60 business days, and nearly 85% of all appeals within 4 months of the case being ready for decision. Other FY 18 performance plan objectives support the Board's emphasis on prompt case resolution, are on-going in nature, were performed timely in FY18, and were within budget.

8. Please describe any initiatives or programs that the agency implemented in FY 18 and FY 19, to date, to improve the internal operations of the agency or the interaction of the agency with outside parties. Please describe the funding required and the results, or expected results, of each initiative.

Response: The Board did not implement any new initiatives in FY18 or FY19 to date. The Board did, however, complete the first draft of an update of its rules, which the Board intends to finalize for publication during FY19. From a technology standpoint, in FY16-18 the Board worked with OCTO's Enterprise Cloud & Infrastructure Services (ECIS) Program to migrate the Board's internal servers to the ECIS platform, thereby lowering systemic risk and ensuring better IT resource management and maintenance. In FY19 the Board, with the assistance of OCTO, has been updating its IT hardware by migrating old desktop and laptop

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

computers to newer machines utilizing the more secure and Microsoft-supported Windows 10 platform.

9. What are the agency's top five priorities? Please explain how the agency expects to address these priorities in FY 19.

Response: The Board's top five priorities are listed below. The Committee will note that the Board has generally identified these same priorities for the past several years. That is because the priorities are dynamic in nature. The Board believes that if we focus on these five priorities each year, our mission will be continuously fulfilled and service to our stakeholders will be optimized.

1. Transparency: Continue Displaying All Board Case Records On The Public Website and Maintaining the Board's Online Hearing Calendar.

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 "the most transparent database" of any government agency in the region.² In FY19/20, the Board will continue the prompt website display (i.e., within three days of filing) of all material filed in pending and closed cases (not subject to protective order). The Board will also continue to post all upcoming trial and pretrial hearing dates on its website calendar (presently updated through December 2019). With respect to the Board's database of case records, 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 FY18, parties submitted 1,461 pleadings, motions, or other materials with the Board totaling 26,275 pages of material. One of the Board's top priorities is to ensure that all filings made in pending cases are uploaded to the public website within three business days of filing. For FY18 and FY19 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 Clerk is tasked with uploading all new case materials within three business days of filing. The Clerk prepares 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 FY14-FY18:

FY14	FY15	FY16	FY17	FY18
1,361 Filings 28,821 Pages	728 Filings 22,157 Pages	1,783 Filings 35,737 Pages	1,933 Filings 41,742 Pages	1,461 Filings 26,275 Pages

Closed Files. In addition to filings made in "pending" cases, the Board has "closed" cases from the pre-digital era consisting entirely of paper filings. The Board is in the process of digitally converting and archiving these files to 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

² Michael Neibauer, *D.C. Contract Appeals Board Tackles Backlog*, WASHINGTON BUSINESS JOURNAL, Nov. 11, 2011, at BizBeat.

copy case files are digitized and uploaded. Through the end of FY18, the Board has uploaded complete records for 1,727 cases (out of a total of 2,622 cases filed between 1953-2018). One of the Board's top priorities is to ensure that the remaining hard copy case files are digitized and uploaded. The Board will continue, within authorized funding levels, to inventory, scan, convert, and upload pre-digital age files.

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 FY18, the Board closed 91% of protests within the 60 business day timeline. Although, a number of factors may extend case closure timelines (e.g., Motions for Continuance, multi-party protests, general Motions Practice, 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 to remain on track with closure deadlines.

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 case filings (and filing types), and other data. In FY17, the Board worked with representatives of OCTO and DC-Net to migrate its application and file servers to OCTO's Enterprise Cloud Infrastructure System (ECIS). The Board worked with the OCTO-ECIS team again in FY18 to migrate its domain controllers to ECIS. These initiatives were undertaken to ensure that the Board's technology environment does not pose security risks to the District. In FY18, the Board also filled a vacant IT Specialist position. The new IT Specialist will assist the Board with on-going technology assessments and improvements.

4. Pursue Settlement of Cases on the Board's Docket and Research Best Practices Regarding The Implementation Of A CAB Alternative Dispute Resolution/Mediation Program.

The Board had a very good record of case settlement in FY18 (55%), and intends to continue identifying factors which contribute to settlement between the parties. The Board's five-year record for case settlement is below:

Percentage of Board Cases Settled Between FY14-FY18.

FY18	FY17	FY16	FY15	FY14
55%	48%	73%	36%	54%

We will continue to emphasize case settlement as a top Board priority.

5. Preventing The Occurrence Of Future Case Backlogs and Updating CAB Rules.

The Board will continue to prioritize pre-emptive measures and strong case management to prevent case backlogs on our appeals docket. The Board does not have a case backlog on either its appeal or protest docket at present. (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).

The Board will continue to implement the following measures to prevent the development of case backlogs:

- *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 previous Board backlogs were caused largely by a five-year continuous vacancy in one of the Board's three judge positions (FY06-FY10). Because of the efforts of the Executive Office of the Mayor, the Mayor's Office of Talent and Appointments, the Council of the District of Columbia, and the Board, the three current judges have been seamlessly reappointed between FY12-FY18 in such manner as has allowed them to provide uninterrupted service. We look forward to continued stabilization in the future. While there are no current Board vacancies, the term of one Board Judge is set to expire on July 28, 2019.
- *Maintaining the Current Number of Budgeted and Staffed FTE Attorney Positions.* Prior to FY13, the Board had no budgeted FTE attorney positions. Since FY13, three FTE attorney positions have been created (one added in FY13 and two added in FY15). These positions are necessary to assist judges with the management of the Board's voluminous docket, which included over 26,000 pages of litigation materials filed in FY18. The three attorney positions are currently filled, and maintaining full staffing levels will continue to be a top Board priority.
- *Rigorous Case Management And Annually Prioritizing The Closure Of Any Appeals Case That Is Three Years Or Older.* Finally, preventing the occurrence of any future appeals case backlog will require rigorous case management by Board Judges and staff. (The Board has never had a protest case backlog.) As regards appeals cases, 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; (3) that each Scheduling Order include a trial date that is no more than 2.5 years from the date of initial filing, and (4) Accountability meetings are held quarterly to prevent cases from getting backlogged. In addition, Board Judges manage their dockets each year to prioritize the closure of any case that is three years (or more) old as a first priority (absent exigent circumstances).
- *Rules Update.* Finally, a continuing priority will be the updating of the Board's rules for litigants practicing before it. In FY17, the Board was given statutory authority to promulgate its own rules ("The Contract Appeals Board Rulemaking Amendment Act of 2017"). The Board's rulemaking authority was part of the FY18 Budget Support Act clarifying the Board's authority under the Procurement Practices Reform Act of 2010 to

issue procedural rules for our cases. The Board completed an initial draft of updated protest and appeals rules in the final quarter of FY18. In addition to updating the Board's rules, the initial draft compares CAB rules (as applicable) to three of our federal counterparts: the General Accounting Office (as to protests), the Civilian Board of Contract Appeals (as to appeals), and the Armed Services Board of Contract Appeals (as to appeals). The rules are being finalized internally, and the Board intends to submit final proposed rulemaking in either the second or third quarter FY19.

10. Please provide a current organizational chart for the agency, including the number of vacant, frozen, and filled positions in each division or subdivision. Include the names and titles of all senior personnel and note the date that the information was collected on the chart.

Response: Please see Attachment 3. The Board does not have any vacancies.

a. Please provide an explanation of the roles and responsibilities for each division and subdivision.

b. Please provide a narrative explanation of any changes made to the organizational chart during the previous year.

Response: The Board operates through the following two programs: (1) Contract Appeals Board (Agency Management) -- provides for administrative support and the required tools to achieve operational and programmatic results³; and (2) Adjudication – adjudicates protests of District contract solicitations and awards, appeals by contractors of District contracting officer's final decisions, claims by the District against contractors, appeals by contractors of suspensions and debarments, and disputes arising under the Public-Private Partnership Act and contractor appeals of interest payment claims under the Quick Payment Act. In FY17, the Board converted its Administrative Officer (Protest Clerk) position to a dedicated IT Specialist position to better align with the Board's technology needs and development goals. The Board hired an IT Specialist in May 2018.

11. Please provide a current Schedule A for the agency which identifies each position by program and activity, with the salary, fringe benefits, and length of time with the agency. Please note the date that the information was collected. The Schedule A should also indicate if the position is continuing/term/temporary/contract or if it is vacant or frozen. Please separate salary and fringe and indicate if the position must be filled to comply with federal or local law.

Response: Please see table below. The Board's Chairperson/Chief Administrative Judge and two Administrative Judge positions are statutorily mandated. D.C. Official Code § 2-360.01(a)(1).

³ The Board understands this program is standard for all agencies using performance-based budgeting.

Contracts Appeals Board as February 5, 2019													
	Title	Name	Posn Nbr	Hire Date	Vac Stat	Grade	Step	Salary	Fringe 16.6%	Prgrm Code	Activity	Reg/Temp/Term	Funding Source
1	CHIEF ADMIN JUDGE	Loud, Marc D.	00006341	8/3/2010	F	18	0	187,121.36	30,126.54	1090	1010	Term	Local
2	ADMIN JUDGE	Parchment, Monica C	00003040	5/2/2011	F	17	0	184,540.55	29,711.03	2001	2001	Term	Local
3	General Counsel	Poindexter, Mark D	00011739	7/27/2015	F	15	5	157,085.00	25,290.69	2001	2001	Reg	Local
4	ADMIN JUDGE	McBean, Maxine E	00013299	8/1/2011	F	17	0	184,540.55	29,711.03	2001	2001	Term	Local
5	STAFF ASSISTANT	House, Mia J	00018016	9/1/1988	F	11	10	77,007.00	12,398.13	2001	2001	Reg	Local
6	Clerk of Court	Tuttle, Thane Forrest	00077391	1/28/2013	F	9	0	130,070.55	20,941.36	2001	2001	Reg	Local
7	Program Support Assistant	Berry, Uday	00077392	9/22/2014	F	8	5	50,812.00	8,180.73	2001	2001	Reg	Local
8	Attorney Advisor	Edwards, Jason	00085519	8/12/2015	F	14	4	129,618.00	20,868.50	2001	2001	Reg	Local
9	Attorney Advisor	Jean-Baptiste, Giovanna	00087310	2/22/2016	F	14	3	125,689.00	20,235.93	2001	2001	Reg	Local
	Information Technology												
10	Special	Ortiz, Angel	00094107	5/16/2018	F	11	3	63,567.00	10,234.29	2001	2001	Reg	Local

12. Please list all employees detailed to or from your agency. 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.

13. Please provide the Committee with:

a. A list of all employees who received or retained cellphones, personal digital assistants, or similar communications devices at agency expense in FY 18 and FY 19, to date;

Response: Please see table below. FY19 information is available through December, 2018.

CAB Staff Member	Position	Justification
Marc D. Loud, S.	Chief Administrative Judge	Critical Contact
Maxine McBean	Administrative Judge	Critical Contact
Monica Parchment	Administrative Judge	Critical Contact
Jason Edwards	Attorney Advisor	Critical Contact
Mia House	Appeals Clerk-ATC	Critical Contact
Mark Poindexter	General Counsel	Critical Contact
Manuel Ortiz	IT Specialist (beginning June, 2018)	Critical Contact
Thane Tuttle	Clerk of Court	Critical Contact
Al Wilcox	Protest Clerk/IT Support (ending December, 2017)	Critical Contact

b. A list of all vehicles owned, leased, or otherwise used by the agency and to whom the vehicle is assigned as well as a description of all vehicle accidents involving the agency's vehicles in FY 18 and FY 19, to date;

Response: Not applicable.

c. A list of travel expenses, arranged by employee for FY 18 and FY 19, to date, including justification for travel;

Response: Not applicable.

d. A list of total workers' compensation payments paid in FY 18 and FY 19, to date, including the number of employees who received workers' compensation payments, in what amounts, and for what reasons.

Response: Not applicable.

14. Please separately list each employee whose salary was \$100,000 or more in FY 18 and FY 19, to date. Provide the name, position number, position title, program, activity, salary, and fringe. In addition, state the amount of any overtime or bonus pay received by each employee on the list.

Response: Please see tables below. No CAB employees received overtime or bonus pay in FY18 or FY19 to date.

FY2018 Contracts Appeals Board as September 30, 2018													
	Title	Name	Posn Nbr	Hire Date	Vac Stat	Grade	Step	Salary	Fringe 16.9%	Prgm Code	Activity	Reg/Temp/Term	Funding Source
1	CHIEF ADMIN JUDGE	Loud, Marc D.	00006341	8/3/2010	F	18	1	183,452.31	31,003.44	1090	1010	Term	Local
2	ADMIN JUDGE	Parchment, Monica C	00003040	5/2/2011	F	17	0	180,922.11	30,575.84	2001	2001	Term	Local
3	General Counsel	Poindexter, Mark D	00011739	7/27/2015	F	15	4	149,477.00	25,261.61	2001	2001	Reg	Local
4	ADMIN JUDGE	McBean, Maxine E	00013299	8/1/2011	F	17	0	180,922.11	30,575.84	2001	2001	Term	Local
5	Clerk of Court	Tuttle, Thane Forrest	00077391	1/28/2013	F	9	0	127,520.15	21,550.91	2001	2001	Reg	Local
6	Attorney Advisor	Edwards, Jason	00085519	8/12/2015	F	14	4	127,076.00	21,475.84	2001	2001	Reg	Local
7	Attorney Advisor	Jean-Baptiste, Giovanna	00087310	2/22/2016	F	14	3	123,224.00	20,824.86	2001	2001	Reg	Local

FY2019 Contracts Appeals Board as February 5, 2019													
	Title	Name	Posn Nbr	Hire Date	Vac Stat	Grade	Step	Salary	Fringe 16.6%	Prgm Code	Activity	Reg/Temp/Term	Funding Source
1	CHIEF ADMIN JUDGE	Loud, Marc D.	00006341	8/3/2010	F	18	0	187,121.36	30,126.54	1090	1010	Term	Local
2	ADMIN JUDGE	Parchment, Monica C	00003040	5/2/2011	F	17	0	184,540.55	29,711.03	2001	2001	Term	Local
3	General Counsel	Poindexter, Mark D	00011739	7/27/2015	F	15	5	157,085.00	25,290.69	2001	2001	Reg	Local
4	ADMIN JUDGE	McBean, Maxine E	00013299	8/1/2011	F	17	0	184,540.55	29,711.03	2001	2001	Term	Local
5	Clerk of Court	Tuttle, Thane Forrest	00077391	1/28/2013	F	9	0	130,070.55	20,941.36	2001	2001	Reg	Local
6	Attorney Advisor	Edwards, Jason	00085519	8/12/2015	F	14	4	129,618.00	20,868.50	2001	2001	Reg	Local
7	Attorney Advisor	Jean-Baptiste, Giovanna	00087310	2/22/2016	F	14	3	125,689.00	20,235.93	2001	2001	Reg	Local

15. Please list in descending order the top 25 overtime earners in your agency in FY 18 and FY 19, to date, if applicable. For each state the employee's name, position number, position title, program, activity, salary, fringe, and the aggregate amount of overtime pay earned.

Response: Not applicable.

16. For FY 18 and FY 19, to date, please provide a list of employee bonuses, special pay granted, or separation pay issued, that identifies the employee receiving the bonus, special pay, or separation pay, the amount received, and the reason for the bonus, special pay, or separation pay.

Response: Not applicable.

17. Please provide each collective bargaining agreement that is currently in effect for agency employees. Please include the bargaining unit and the duration of each agreement. Please note if the agency is currently in bargaining and its anticipate completion.

Response: Not applicable.

18. Please provide a list of any additional training or continuing education opportunities made available to agency employees. For each additional training or continuing education

program, please provide the subject of the training, the names of the trainers, and the number of agency employees that were trained.

Response: Please see table below for recent Board training activities. Routine, required trainings related to agency operations conducted by District offices or agencies such as OCA, OCTO, OCP, BEGA, OHR, etc. are not listed. The Board has subscribed to West LegalEdcenter and PubKLaw Daily Digest for Government Contracts-related continuing legal education. Consistent with its operational needs and budgetary resources, the Board encourages all staff to participate in the relevant continuing education opportunities provided through District government agencies, UDC Community College Division of Workforce Development and private/not-for-profit educational institutions.

Training	Date(s)	Subject	Training Provider	Number of Agency Staff Participating
Government Contracts In-House Training	September 22, 2016	Topics in Construction Delays & Scheduling	Federal Publication Seminars (Jeremy Becker-Welts, Esq.)	6 (Board Judges and Attorney Advisors)
Excel 2010 (Part 1)	April 24, 2017	Use of MS Excel 2010 (Part 1)	New Horizons Computer Learning Center	1 (Appeals Clerk)
2017 American Constitution Society for Law and Policy (ACS) Annual Convention	June 8-10, 2017	Presentations on recent developments in Constitutional Law	ACS (various moderators and panelists)	1 (Board Judge)
Excel 2010 (Part 2)	July 24, 2017	Use of MS Excel 2010 (Part 2)	New Horizons Computer Learning Center	1 (Appeals/Protest Clerk)
American Bar Association (ABA) 2017 Annual Meeting	August 10-15, 2017	Presentations on recent developments in the law and related practice topics	ABA (various moderators and panelists)	1 (Board Judge)
Boards of Contract Appeals Bar Association (BCABA) Annual Program	October 25, 2017	Presentations on key government contracts decisions and other recent developments in government contracts law and practice	BCABA, Inc. (various moderators and panelists)	7 (Board Judges, Attorney Advisors and General Counsel)
2018 American Constitution Society for Law and Policy (ACS) Annual Convention	June 7-9, 2018	Presentations on recent developments in Constitutional Law	ACS (various moderators and panelists)	1 (Board Judge)
Smart Contracts	July 3, 2018	Smart Contracts: Exploring the Legal Risks and Business Benefits of Blockchain	American Law Institute (ALI) (WebEx)	1 (Board Judge)
Government Contracts In-House Training	September 20, 2018	Topics in Construction Delays & Scheduling (II)	Federal Publication Seminars (Jeremy Becker-Welts, Esq.)	3 (Attorney Advisors)
BCABA Annual Program	October 9, 2018	Presentations on key government contracts decisions and other recent developments in government contracts law and practice	BCABA, Inc. (various moderators and panelists)	7 (Board Judges, Attorney Advisors and General Counsel)

19. Does the agency conduct annual performance evaluations of all its employees? Who conducts such evaluations? What steps are taken to ensure that all agency employees are meeting individual job requirements?

Response: Except as noted below, it has generally been, and will continue to be, the Board's practice to conduct formal, annual performance evaluations. In some prior years, however, the Board has found it effective to conduct evaluations of Judge/Attorneys through an internal Accountability process. Under this process, Board Judges (and their attorneys) are given a list of cases near the beginning of the fiscal year ("Accountability cases") that require priority consideration for closure. Thereafter, Accountability meetings are held quarterly to provide updates on the closure status of targeted cases. Accountability status reports are then issued to Judges/Attorneys throughout the year.

20. Please provide the mean and median years of service for agency employees. Please also describe what strategies the agency is using to improve employee retention.

Response: As of February 2019, the mean service tenure for Board employees is 7.55 years. The median service tenure for Board employees is 5.25 years. The Board provides a collegial and supportive environment to carry out its mission, including competitive salaries and professional development opportunities. The Board acknowledges its good fortune in hiring and retaining outstanding professionals who are committed to the highest standards of public service.

21. For FY 18 and FY 19, to date, what was the total agency cost for mobile communications and devices, including equipment and service plans?

Response: In FY18, the Board spent a total of \$7,548.56 for mobile communications and devices, including equipment and service plans. In FY19, the Board has spent \$1,450.26 for these services through December 2018.

22. For FY 18 and FY 19, to date, please list all intra-District transfers to or from the agency.

Response: Not applicable.

23. For FY 18 and FY 19, to date, please identify any special purpose revenue funds maintained by, used by, or available for use by the agency. For each fund identified, provide:

- a. The revenue source name and code;
- b. The source of funding;
- c. A description of the program that generates the funds;
- d. The amount of funds generated by each source or program;
- e. Expenditures of funds, including the purpose of each expenditure;
- f. The current fund balance.

Response: Not applicable.

24. For FY 18 and FY 19, to date, please list any purchase card spending by the agency, the employee making each expenditure, and the general purpose for each expenditure.

Response: Please see table below. All purchase card or “PCard” transactions during this period (FY18 through FY19 (February 5, 2019)) were made by Program Assistant Uday Berry as authorized by the Board.

Posting Date of Expenditure	Amount of Expenditure	General Purpose
10/12/2017	\$350.00	Continuing Legal Education-Conference
10/18/2017	\$14.95	Office Supplies
10/30/2017	\$417.13	Legal Research Database
12/19/2017	\$412.24	IT Supplies
12/20/2017	\$900.00	IT Consulting
01/17/2018	\$417.11	Legal Research Database
01/22/2018	\$250.00	IT Specialist Job Posting
02/08/2018	\$817.91	Annual Software Subscription
02/09/2018	\$285.00	Courtroom Equipment Repair
04/23/2018	\$1,297.50	Appeals Record Production Assistance
04/25/2018	\$834.18	Legal Research Database
04/26/2018	\$375.00	IT Consulting
05/14/2018	\$592.83	Office Supplies
05/21/2018	\$375.00	Continuing Legal Education - Conference
05/22/2018	\$181.66	OJS Locksmith Services
05/24/2018	\$1,202.10	Appeals Record Production Assistance
05/25/2018	\$154.98	IT Supplies
06/28/2018	\$199.00	Continuing Legal Education-Online Course
07/19/2018	\$55.82	Cable Service
07/27/2018	\$1,668.40	Legal Research Database
08/02/2018	\$400.00	Office Supplies
08/21/2018	\$375.00	IT Consulting
08/27/2018	\$593.99	Office Furniture
08/30/2018	\$1,102.08	IT Software Licenses
09/05/2018	\$49.87	Cable
09/14/2018	\$5,500.00	Continuing Legal Education-Seminar
09/21/2018	\$1,515.00	Courtroom Furniture Repair
09/24/2018	\$325.00	Copier Repair
09/24/2018	\$6,254.82	Office Supplies
09/25/2018	\$285.50	Copier Repair
09/26/2018	\$1,740.95	Continuing Legal Education-In-House Seminar
09/26/2018	\$589.88	Office Furniture
09/27/2018	\$49.87	Cable
09/28/2018	\$1,605.36	IT Equipment (OCP Waiver)

10/04/2018	\$640.00	A/V Repair
10/04/2018	\$817.91	Annual Software Subscription
10/05/2018	\$350.00	Continuing Legal Education-Conference
10/15/2018	\$97.72	Notary Supplies
11/16/2018	\$1,800.00	Continuing Legal Education-Publication
11/20/2018	\$49.87	Cable
12/07/2018	\$139.44	IT Supplies
12/12/2018	\$49.87	Cable
01/10/2019	\$1,450.78	Legal Research Platform
01/11/2019	\$57.97	Cable
Total	\$36,641.69	

25. Please list all memorandum of understanding (“MOU”) entered into by your agency during FY 18 and FY 19, to date, as well as any MOU currently in force. For each, indicate the date on which the MOU was entered and the 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 FY18 and FY19 to date 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 FY19, the WCSA MOU is continuing, and the DOEE and HBEA MOUs were renewed through September 30, 2019. In addition to its adjudication services agreements, on June 21, 2017, the Board entered into a MOU with OCTO for Enterprise Cloud and Infrastructure Services (ECIS) maintenance of the Board’s application and file servers. In FY19 the Board’s OCTO-ECIS MOU is continuing. On October 26, 2018, the Board entered into a MOU with OCTO-ECIS for Office 365 Enterprise Licenses. That eMOU expires September 30, 2019.

26. Please list the ways, other than MOU, in which the agency collaborated with analogous agencies in other jurisdictions, with federal agencies, or with non-governmental organizations in FY 18 and FY 19, to date.

Response: The Board collaborates with the federal and the Maryland Boards of Contract Appeals through the Board of Contract Appeals Bar Association (BCABA). BCABA is the leading organization for Judges and litigation attorneys in the government contracts field. In FY18 and FY19, CAB Judges and attorneys participated in joint training exercises, panel discussions, and case reviews with other BCABA members.

27. Please list and provide an update on all open capital projects and capital projects in the financial plan under the agency’s purview, including the amount budgeted, actual dollars spent, and any remaining balances. In addition, please provide:

a. A description of whether the capital projects begun, in progress, or concluded in FY 17, FY 18, or FY 19, to date, had an impact on the operating budget of the agency. If so, please provide an accounting of such impact.

b. A description of any projects that are experiencing delays or that require additional funding.

Response: Not applicable.

28. Please provide a table showing your agency's Council-approved budget, revised budget (after reprogrammings, etc.) and actual spending, by program, activity, and funding source for FY 18 and the first quarter of FY 19. Please detail any over- or under-spending and if the agency had any federal funds that lapsed.

Response: Please see tables below.

FY 2018 EXPENDITURES								
Program Title	Activity Title	Appropriated Fund	Program	Activity	FY 2018 Approved Budget	FY 2018 Revised Budget	FY 2018 Expenditures	Variance
PERSONNEL	PERSONNEL	100	1010	1010	\$ 9,281	\$ 9,281	\$ 1,317	\$ 7,964
PERSONNEL	PERFORMANCE MANAGEMENT	100	1090	1090	\$ 208,209	\$ 208,209	\$ 213,953	\$ (5,744)
PROPERTY MANAGEMENT	PROPERTY MANAGEMENT	100	1030	1030	\$ 222	\$ 222	\$ -	\$ 222
ADJUDICATION	ADJUDICATION	100	2001	2001	\$ 1,272,709	\$ 1,316,999	\$ 1,269,717	\$ 47,282
TOTAL					\$ 1,490,421	\$ 1,534,711	\$ 1,484,987	\$ 49,724

FY 2019 EXPENDITURES as of 12/31/2018								
Program Title	Activity Title	Appropriated Fund	Program	Activity	FY 2019 Approved Budget	FY 2019 Revised Budget	FY 2019 Expenditures	Variance
PERSONNEL	PERFORMANCE MANAGEMENT	100	1090	1090	\$ 213,905	\$ 213,905	\$ 53,896	\$ 160,010
ADJUDICATION	ADJUDICATION	100	2001	2001	\$ 1,342,537	\$ 1,342,537	\$ 331,866	\$ 1,010,671
TOTAL					\$ 1,556,442	\$ 1,556,442	\$ 385,762	\$ 1,170,681

29. Please provide a list of all budget enhancement requests (including capital improvement needs) made for FY 18, FY 19, or FY 20. For each, include a description of the need and the amount of funding requested.

Response: The Board did not request enhancements for its FY18 and FY20 budgets. The Board requested an enhancement of \$22,000 for the FY19 proposed budget to cover: (1) salary increases/steps to five (5) CAB positions which increased PS costs by \$14,666 from FY18 to FY19; and (2) underfunding of the Board's FY18 PS budget by \$21,484 (\$1,205,049 FY18 budgeted vs. \$1,226,533 FY18 costs)(the total FY19 PS delta is \$36,150). While the FY19 MARC made up the difference in these two areas by transferring \$41,331 from the FY19 NPS to the FY19 PS, that resulted in an approximately \$22,000 shortfall in the FY19 NPS budget. The requested \$22,000 enhancement to CAB's FY19 NPS budget will pay for recurring OCTO-ECIS charges (not reflected in the proposed FY19 budget and priced at \$11,951), and approximately \$10,000 in recurring actual expenditures.

30. Please list, in chronological order, each reprogramming in FY 18 and FY 19, to date, that impacted the agency including those that moved funds into the agency, out of the agency, and within the agency. Include revised, final budget for your agency after the reprogrammings for FY 18 and FY 19, to date. For each reprogramming, list the date, amount, rationale, and reprogramming number.

Response: Please see the FY18 reprogramming table below. There have been no reprogrammings in FY19 through February 5, 2019.

FY 2018 Re-Programming											
Program Title	Activity Title	Appropriated Fund	Program	Activity	FY 2018 Approved Budget	FY2018 Current Budget	FY 2018 Revised Budget	Variance	Date	Rationale	Reprogramming number
Adjudicator	Continuing Full Time	100	2001	2001	\$351,305	\$351,305	\$381,305	\$30,000	7/11/2018	Fund were needed to cover Personnel services pressure	n/a
Adjudicator	Continuing Full Time	100	2001	2001	\$675,635	\$675,635	\$689,925	\$14,290	6/26/2018	FY 2018 COLA Correction	n/a

31. Please list each grant or sub-grant received by your agency in FY 18 and FY 19, to date. List the date, amount, source, purpose of the grant or sub-grant received, and amount expended.

Response: Not applicable.

32. How many FTEs are dependent on grant funding? What are the terms of this funding? If it is set to expire, what plans, if any, are in place to continue funding the FTEs?

Response: Not applicable

33. Please list each contract, procurement, and lease entered into, extended, and option years exercised by your agency during FY 18 and FY 19, to date. For each contract, please provide the following information where applicable:

- The name of the contracting party;
- The nature of the contract, including the end product or service;
- The dollar amount of the contract, including amount budgeted and amount actually spent;
- The term of the contract;
- Whether the contract was competitively bid;
- The name of the agency's contract monitor and the results of any monitoring activity;
- The funding source.

Response: Please see table below.

FY(Issue Date)	Purchase Order	Contracting Party	Service	Amount	Term	Competitively Bid	Contract Monitor/Activity Results	Funding Source
FY18 (10-24-2017)	PO572828	MVS	Annual Copier Service Agreement	\$3,930.00	FY18	OCP procurement – PO awarded to DCSS/SBE vendor	Mark Poindexter, CAB General Counsel/N/A	Local
FY18 (10-19-2017)	PO572314	Mb Staffing	Temp Services	\$9,000.00	FY18	OCP procurement – PO awarded to	Mark Poindexter, CAB General Counsel/N/A	Local

						DCSS/SBE vendor		
FY18 (6-20-2018)	PO585361	MVS	IT Equipment	\$409.08	Single Purchase in FY18	OCP procurement – PO awarded to DCSS/SBE vendor	Mark Poindexter, CAB General Counsel/N/A	Local
FY18 (9-17-2018)	PO589888	MVS	IT Equipment	\$4,788.91	Single Purchase in FY18	OCP procurement – PO awarded to DCSS/SBE vendor	Mark Poindexter, CAB General Counsel/N/A	Local
FY19 (10-24-2018)	PO593435	Mb Staffing	Temp Services	\$9,000.00	FY19	OCP procurement – PO awarded to DCSS/SBE vendor	Mark Poindexter, CAB General Counsel/N/A	Local
FY19 (11-21-2018)	PO595536	MVS	Annual Copier Service Agreement	\$3,930.00	FY19	OCP procurement – PO awarded to DCSS/SBE vendor	Mark Poindexter, CAB General Counsel/N/A	Local

34. What is your agency's current adjusted expendable budget for CBE agency compliance purposes, how much has been spent with SBEs or CBEs, and what percent of the agency's current adjusted expendable budget has been spent with SBEs or CBEs?

Response: The Board's FY19 adjusted expendable budget is \$65,360.69, with an adjusted approved SBE spending goal of \$32,680.35 as of February 5, 2019. In FY19 (through February 5, 2019), the Board has spent \$5,935.11 with SBEs, or approximately 9% of its adjusted expendable budget and 18% of its current SBE spending goal.

35. Please list all pending lawsuits that name the agency as a party. Identify which cases on the list are lawsuits that potentially expose the District to financial liability or will result in a change in agency practices and describe the current status of the litigation. Please provide the extent of each claim, regardless of its likelihood of success. For those identified, please include an explanation about the issue involved in each case.

Response: Not applicable.

36. Please list all settlements entered into by the agency or by the District on behalf of the agency in FY 18 or FY 19, to date, and provide the parties' names, the amount of the settlement, and if related to litigation, the case name and a brief description of the case. If unrelated to litigation, please describe the underlying issue or reason for the settlement (e.g. administrative complaint, etc.).

Response: Not applicable.

37. Please list the administrative complaints or grievances that the agency received in FY 18 and FY 19, to date, broken down by source. Please describe the process utilized to respond to any complaints and grievances received and any changes to the agency policies or procedures that have resulted from complaints or grievances that were resolved in FY 18 or FY 19, to date, describe the resolution.

Response: Not applicable.

38. Please describe the agency's procedures for investigating allegations of sexual harassment or misconduct committed by or against its employees. List and describe any sexual harassment allegations received by the agency in FY 18 and FY 19, to date, whether or not those allegations were resolved.

Response: The Board is committed to addressing any allegations of sexual harassment or misconduct committed by or against its employees fairly and expeditiously in accordance with the policy and procedures outlined in Mayor's Order 2017-313, Sexual Harassment Policy, Guidance and Procedures (December 18, 2017) (Mayor's Order) as applied to independent agencies. A copy of the Mayor's Order has been provided to all Board staff. The Board's General Counsel has been designated as its "Sexual Harassment Officer" to review and investigate such allegations as well as recommend appropriate disciplinary action and/or referrals. The Board also notes that the Office of Human Rights maintains concurrent jurisdiction (if requested by the complainant) pursuant to Section VI of the Mayor's Order and other applicable law. The Board received no sexual harassment allegations in FY18 and FY19 through February 5, 2019.

39. Please list and describe any spending pressures the agency experienced in FY 18 and any anticipated spending pressures for the remainder of FY 19. Include a description of the pressure and the estimated amount. If the spending pressure was in FY 18, describe how it was resolved, and if the spending pressure is in FY 19, describe any proposed solutions.

Response: A reprogramming was done at the end of FY18 to ensure the Board stayed within its budget. Due to an accounting decision, the funds were not needed and ultimately went to the General Fund. The Board is not projecting any spending pressure in FY19.

40. Please provide the number of FOIA requests for FY 18, and FY 19, to date, that were submitted to your agency. Include the number granted, partially granted, denied and pending. In addition, please provide the average response time, the estimate number of FTEs required to process requests, the estimated number of hours spend responding to these requests, and the cost of compliance.

Response: The Board processed nine (9) FOIA requests in FY18, and has processed none to date (through February 5, 2019) in FY19. For the nine (9) FOIA requests processed in FY18, two (2) requests were granted in whole; seven (7) requests were "other" dispositions (i.e., no relevant information maintained by the Board); and no requests were partially granted, denied or pending. The median number of days to process FOIA requests was 0.01(approximately five minutes). The FY18 FOIA requests required a total of 1.16 hours and a fraction of one FTE to process. The total dollar amount expended for processing the FY18 FOIA requests was \$83 (based on processor's FY18 hourly rate).

41. Please identify all electronic databases maintained by your agency, including the following:

- a. A detailed description of the information tracked within each system;
- b. The age of the system and any discussion of substantial upgrades that have been

made or are planned to the system;

c. Whether the public is currently granted access to all or part of each system; and

d. Whether the public could be granted access to all or part of each system.

Response: Please see table below. Note that for the identified databases using proprietary software, the Board's "maintenance" is limited to uploading, storing and/or disseminating documents.

Board Databases	Description	Age/Upgrades	Current Public Access	Possible Public Access
iManage Worksite/FileSite	Proprietary software used to assist the Board in maintaining its public case-access website	2003 - On-going upgrades by vendor	Full public access to database through CAB's webpage portal	n/a
File&ServeXpress	Proprietary software used to assist the Board in case/docket management	2012 - On-going upgrades by vendor	Party access permitted through establishing an account with File&ServeXpress	CAB's public website is updated to reflect non-sealed party filings through File&ServeXpress

42. Please list and describe any ongoing investigations, audits, or reports on the agency or any employee of the agency that were completed during FY 18 and FY 19, to date.

Response: There are no ongoing investigations, audits, or reports of the Board or its employees. In December 2017, the Office of Contracts and Procurement (OPIC Division) completed a preliminary review of two Board PCard transactions for the month of October 2017. The review preliminarily concluded that although the Board's two transactions were not inappropriate, (1) the Board should have uploaded a PDF invoice to the PaymentNet PCard management system when recording a transaction for training sponsored by the Board of Contract Appeals Bar Association, and (2) the Board should have sourced a \$14.95 office supply acquisition through a District CBE (or DSS vendor) rather than an online retailer. After several exchanges between the Board and OCP, a final report was issued by OCP on March 23, 2018, noting the two transactions, the Board's review thereof, and Board compliance with District CBE/DSS and PCard receipt upload policies.

43. Please provide a list of all studies, research papers, reports, and analyses that the agency prepared or contracted for during FY 18 and FY 19, to date. Please state the status and purpose of each. Please submit a hard copy to the Committee if the study, research paper, report, or analysis is complete.

Response: Not applicable.

44. If there are any boards, commissions, or similar entities associate with your agency, please provide a chart listing the names, confirmation dates, terms, wards of residence, and attendance of each member. Include any vacancies. Please also attach agendas and minutes of each meeting in FY 18 and FY 19, to date, if minutes were prepared. Please inform the Committee if the entity did not convene during any month.

Response: Not applicable.

45. Please list the task forces or other organizations of which the agency is a member.

Response: Not applicable.

46. Please list all statutory mandates with which the agency must comply, and the estimated cost for compliance with each mandate in FY 18 and FY 19, to date, and any mandates for which the agency lacks sufficient resources to fully implement.

Response: The Board's statutory mandates generally relate to its organization (D.C. Official Code §§ 2-360.01 and 2-360.02); jurisdiction (D.C. Official Code § 2-360.03); and case procedures (D.C. Official Code §§ 2-360.04 and 2-360.08). As noted with respect to the Board's workload and KPI measures, the Board is specifically required to adjudicate protest cases within 60 business days of the filing date. D.C. Official Code § 2-360.08(d). The Board has sufficient resources to fully implement all applicable statutory mandates.

OPERATIONS

47. Please list the names of each member of the Board, and the dates their terms will expire.

Response: Please see table below.

Board Member	Current Term Start Date	Current Term End Date
Marc D. Loud, Sr., Chairman and Chief Administrative Judge	July 10, 2018	July 28, 2022 (R22-0555)
Maxine E. McBean, Administrative Judge	December 15, 2015	July 28, 2019 (R21-0336)
Monica C. Parchment, Administrative Judge	June 27, 2017	July 28, 2021 (R22-0147)

48. Please provide a listing of all goods, materials, and administrative services that were provided to the Board by the Office of the Attorney General pursuant to D.C. Code § 2-360.01(c) in FY 18 and FY 19, to date.

Response: Not applicable.

49. Please provide the total of fees received pursuant to D.C. Official Code § 2-360.03 and how those fees were used to improve the Board's services and programs, including any incentive awards funded by the fees.

Response: Not applicable.

50. Please provide any fee-for-service agreements entered into by the Board pursuant to D.C. Official Code § 2-360.03(b).

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 FY18 and FY19 to date 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 FY19, the WCSA MOU is continuing, and the DOEE and HBEA MOUs were renewed through September 30, 2019. At the Committee's request, the Board is happy to furnish copies of these MOUs.

51. Please provide an update on the Board's effort to update its rules. What significant changes to the rules have occurred in FY 18 and FY 19, to date.

Response: The Board completed an initial draft of updated protest and disputes rules in the final quarter of FY18. In addition to updating the Board's rules, the initial draft compares CAB rules (as applicable) to three of our federal counterparts: the General Accounting Office (as to protests), the Civilian Board of Contract Appeals (as to appeals), and the Armed Services Board of Contract Appeals (as to appeals). The rules are being finalized internally, and the Board intends to submit final proposed rulemaking during either the second or third quarter FY19. There were no finalized changes to Board rules in FY18 and FY19 to date.

52. Please describe the status and efficiency of the Board's case management software. In the opinion of the Board are additional investments necessary to improve this software?

Response: The Board currently utilizes File&ServeXpress as its primary case management software. While File&ServeXpress has been reliable and user-friendly for litigants, it has some limitations. For example, the Board is not aware of an automatic reporting function which it can utilize for internal case tracking and management. While the File&ServeXpress database is generally searchable, the generation of standard reports usually requires the involvement of File&ServeXpress Customer Service technicians who, depending on their workload, can be delayed in production. Board staff also has had discussions with representatives of File&ServeXpress to explore the development of a protocol to support the Board in generating the Administrative Record for cases on appeal to the Superior Court of the District of Columbia or the District of Columbia Court of Appeals. Those discussions are on-going. Ultimately, the Board seeks to have an in-house case management system, created and supported by an in-house IT team, to better manage the Board's docket and case management/appellate needs. Additional investments in the Board's current IT program likely would be required for such an initiative.

53. How are contractors made aware of their right to appeal decisions to the Contract Appeals Board?

Response: Notification language is included in all Contracting Officer Final Decisions that advise a party of appeal rights to the Board. Typical language provides that "*within 90 days of the receipt of a decision of the CO, the contractor may appeal the decision to the District of Columbia Contract Appeals Board. The appeal shall be filed in writing, with the Contract Appeals Board, 441 4th Street, N.W., Suite 350N, Washington D.C. 20001*". See generally 27 DCMR §3803(g). In addition, the Office of Contracting and Procurement (OCP) has issued various standardized contract provisions for construction, goods, and services contracts which includes a disputes resolution clause identifying appeal rights to the Board. Similarly, in July 2010, OCP issued Standard Contract Provisions For Use With On-Line Solicitations and Purchase Orders Only and District Of Columbia Supplies And

Services Contracts (“On-Line Solicitation/PO Standard Provisions”), which provides that parties may appeal disputes to the Board. In addition, the District’s Procurement Practices Reform Act notifies parties of their appeal rights to the Board. *See* D.C. Official Code § 2-360.04. There may be other forms of notification OCP provides to its contracting parties of which the Board is not aware.

CASES

54. Please list the number of complaints filed by contractors with the Board in FY 18, and FY 19, to date.

Response: In FY18, 46 cases were filed with the Board (27 Protests, 19 Appeals). In FY19 (through February 5, 2019) 12 cases have been filed with the Board (7 Protests, 5 Appeals).

55. Please list the number of cases that were open at the beginning of FY 18, at the beginning of FY 19, and that are currently open, and the average number of days that those cases had remained open, in each of the following categories:

a. Protests of a solicitation or award of a contract addressed to the Board by any actual or prospective bidder, offeror, or the contractor who is aggrieved in connection with the solicitation or award of a contract;

b. Any appeal by a contractor from a final decision by the contracting officer on a claim by a contractor, when the claim arises under or relates to a contract;

c. Any claim by the District against a contractor, when such claim arises under or relates to a contract;

d. Quick Payment Act claims;

e. Public-Private Partnership Act claims; and

f. Appeals from Debarments and Suspensions.

Response: Please see table below. Note that while this table reflects calendar days, the Board’s statutory standard for the disposition of protest cases is 60 business days from the filing date. D.C. Official Code § 2-360-08(d)). The Board’s adopted standard for the disposition of appeal cases is four months from the case being ready for decision.

Case Type	Cases Pending since 10/1/17 (average number of calendar days open through 2/5/19)	Cases Pending since 10/1/18 (average number of calendar days open through 2/5/19)
Protest	1 (609)*	1 (609)*
Contractor Appeal	3 (900)	9 (492.2)
District Claim	0 (0)	0 (0)
Quick Payment Act Claim	0 (0)	0 (0)
Public-Private Partnership Act Claim	0 (0)	0 (0)
Appeal from Debarments and Suspensions	0 (0)	0 (0)

* The Board has one protest case that was decided by written decision on November 30, 2017. Subsequent to the Board's decision, however, the parties engaged in protracted litigation on appeal to the DC Superior Court, followed by the parties' formal withdrawal of all appeals. The Board's calculation of "calendar days open" includes the period of time the case was on appeal. The Board has now retained jurisdiction solely on the issue of the protester's motion for costs, and will formally close the case following the resolution of that one remaining issue.

56. Please list the total number of cases that were resolved through alternate dispute resolution or mediation, and the average number of days from filing to resolution, in FY 18 and FY 19, to date, in each of the following categories:

a. Protests of a solicitation or award of a contract addressed to the Board by any actual or prospective bidder, offeror, or the contractor who is aggrieved in connection with the solicitation or award of a contract;

b. Any appeal by a contractor from a final decision by the contracting officer on a claim by a contractor, when the claim arises under or relates to a contract;

c. Any claim by the District against a contractor, when such claim arises under or relates to a contract;

d. Quick Payment Act claims;

e. Public-Private Partnership Act claims; and

f. Appeals from Debarments and Suspensions.

Response: Please see table below. "Cases Settled" refers to those cases: (1) withdrawn by the protester/appellant; (2) jointly dismissed by the parties; or (3) protests dismissed after the District takes voluntary corrective action, including cancellation of the solicitation/award. No CAB cases were resolved through formal Alternate Dispute Resolution during the reporting period. Note also that while this table reflects calendar days, the Board's statutory standard for the disposition of protest cases is 60 business days from the filing date. D.C. Official Code § 2-360-08(d)). The Board's adopted standard for the disposition of appeal cases is four months from the case being ready for decision.

Case Type	FY18 Cases Settled (average number of calendar days from filing to resolution)	FY19 Cases Settled through February 5, 2019 (average number of calendar days from filing to resolution)
Protest	14 (35.8)	5 (32.6)
Contractor Appeal	17 (287.3)	2 (184.5)
District Claim	0 (0)	0 (0)
Quick Payment Act Claim	0 (0)	0 (0)
Public-Private Partnership Act Claim	0 (0)	0 (0)
Appeal from Debarments and Suspensions	0 (0)	0 (0)

57. Please list the number of cases closed, and the average number of days closed cases were open, in FY 18 and FY 19, to date, in each of the following categories:

a. Protests of a solicitation or award of a contract addressed to the Board by any actual

or prospective bidder, offeror, or the contractor who is aggrieved in connection with the solicitation or award of a contract;

b. Any appeal by a contractor from a final decision by the contracting officer on a claim by a contractor, when the claim arises under or relates to a contract;

c. Any claim by the District against a contractor, when such claim arises under or relates to a contract;

d. Quick Payment Act claims;

e. Public-Private Partnership Act claims; and

f. Appeals from Debarments and Suspensions.

Response: Please see table below. Note that while this table reflects calendar days, the Board's statutory standard for the disposition of protest cases is 60 business days from the filing date. D.C. Official Code § 2-360-08(d)). The Board's adopted standard for the disposition of appeal cases is four months from the case being ready for decision.

Case Type	FY18 Cases Closed (average number of calendar days from filing to resolution)	FY19 Cases Closed through February 5, 2019 (average number of calendar days from filing to resolution)
Protest	38 (71.3)	7 (46.7)
Contractor Appeal	19 (369)	5 (855.8 or 2.3 years)
District Claim	0 (0)	0 (0)
Quick Payment Act Claim	0 (0)	0 (0)
Public-Private Partnership Act Claim	0 (0)	0 (0)
Appeal from Debarments and Suspensions	0 (0)	0 (0)

58. How many cases were resolved through the accelerated disposition procedure described in D.C. Official Code § 2-360.04(c) in FY 18 and FY 19, to date? What was the average number of days from the date the contractor elects to utilize the procedure until resolution for these cases in FY 18 and FY 19, to date?

Response: Not applicable.

59. How many cases were resolved through the small claims procedure described in D.C. Official Code § 2-360.04(d) in FY 18 and FY 19, to date? What was the average number of days from the date the contractor files an appeal until resolution for these cases in FY 18 and FY 19, to date?

Response: Not applicable.

60. How many appeals of Board decisions were made to another tribunal in FY 18, and FY 19, to date, by the Chief Procurement Officer? By other parties? In how many appeals of

Board decisions in FY 18, and FY 19, to date, was the decision of the Board fully upheld? Overturned in part?

Response: Please see table below.

Fiscal Year	Total Cases Closed by CAB	Total Appeals to Other Tribunals Filed	Appeals filed to Other Tribunals by District	Appeals filed to Other Tribunals by Other Parties	Disposition
FY18	57	3	1	2	3 appeals withdrawn by the parties
FY19 (through February 5, 2019)	12	n/a	n/a	n/a	n/a

61. In how many cases were the Board's decisions on questions of fact set aside on appeal in FY 18 and FY 19, to date?

Response: Not applicable.

62. In how many cases in FY 18, and FY 19, to date, did the Board report the neglect or refusal of a subpoena to a judge of the Superior Court of the District of Columbia?

Response: Not applicable.

63. In how many cases in FY 18, and FY 19, to date, did the Chief Procurement Officer make a written determination that urgent and compelling circumstances that significantly affect the interest of the District would not permit waiting for the decision of the Board concerning a protest before performance may proceed?

Response: There were nine (9) such protest cases in FY18 and three (3) cases in FY19 through February 5, 2019.

64. In how many cases in FY 18, and FY 19, to date, did the Board sustain a protest on the basis that an agency's determination of its minimum needs or of the best method of accommodating those minimum needs lacked a reasonable basis?

Response: Not applicable.

65. In how many cases in FY 18, and FY 19, to date, did the Board order, after a protest was sustained, that a contract awarded under a solicitation be terminated for the convenience of the District?

Response: There were two (2) such protest cases in FY18 and no cases in FY19 through February 5, 2019.

66. How many protests were dismissed by the Board in FY 18 and FY 19, to date, for being frivolous?

Response: Not applicable.

67. In the opinion of the Board, what are the top five issues with, or errors in, contracting and procurement that result in a successful appeal before the Board?

Response: Several of the top issues in appeals cases before the Board that impact case outcomes are the appropriate management of change order requests, clarity of contract language, and whether early case evaluation for settlement purposes has occurred. Many, though not all, of the other issues impacting appeals case outcomes are subsets of one or more of the above.

68. Is there anything else regarding the performance of the Board, not otherwise covered by these questions, that the Board would like to highlight for the Committee?

Response: The Board appreciates this opportunity to appear before the Committee on Facilities and Procurement. The Board acknowledges the teamwork conducted at CAB every day in furtherance of our mission. We look forward to appearing before the Committee.



**DC CONTRACT APPEALS BOARD
FY2018-2019 PERFORMANCE OVERSIGHT RESPONSES**

**ATTACHMENT 1
DC CONTRACT APPEALS BOARD
FY19 Performance Plan**

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Contract Appeals Board FY2019

Agency Contract Appeals Board

Agency Code AFO

Fiscal Year 2019

Mission The mission of the Contract Appeals Board (CAB) is to provide an impartial, expeditious, inexpensive, and knowledgeable forum for hearing and resolving contractual disputes, protests, and debarments and suspensions involving the District and its contracting communities.

2019 Strategic Objectives

Objective Number	Strategic Objective
1	Increase public confidence in the DC procurement process through the efficient, effective and fair disposition of public contracting disputes.
2	Increase use of Alternative Dispute Resolution (ADR) in resolving cases without the need for traditional litigation models, resulting in faster, more efficient dispositions of cases and greater party satisfaction.
3	Create and maintain a highly efficient, transparent and responsive District government through the digital archiving and electronic filing of all Board cases permitting web-based retrieval and full-text searching by the parties with pending cases and the public.

2019 Key Performance Indicators

Measure	Directionality	FY 2014 Actual	FY 2015 Actual	FY 2016 Actual	FY 2017 Actual	FY 2018 Actual	FY 2019 Target
1 - Increase public confidence in the DC procurement process through the efficient, effective and fair disposition of public contracting disputes. (4 Measures)							
Percent of pending cases that are three years old or less	Up is Better	80%	71%	75%	92.9%	86.7%	90%
Percent of appeals resolved within 4 months of the cases being ready for decision	Up is Better	84%	80%	91.7%	80%	84.2%	90%
Percent of Protests resolved within 60 business days	Up is Better	82%	91%	83.3%	87%	90.9%	95%
Percent of decisions sustained on appeal	Up is Better	100%	100%	Not Available	100%	No applicable incidents	100%
2 - Increase use of Alternative Dispute Resolution (ADR) in resolving cases without the need for traditional litigation models, resulting in faster, more efficient dispositions of cases and greater party satisfaction. (1 Measure)							
Percent of cases resolved through settlement	Up is Better	Not available	Not Available	72.9%	48.4%	55.4%	50%
3 - Create and maintain a highly efficient, transparent and responsive District government through the digital archiving and electronic filing of all Board cases permitting web-based retrieval and full-text searching by the parties with pending cases and the public. (2 Measures)							
Percent of new cases using electronic filing system	Up is Better	100%	100%	100%	100%	100%	100%

Measure	Directionality	FY 2014 Actual	FY 2015 Actual	FY 2016 Actual	FY 2017 Actual	FY 2018 Actual	FY 2019 Target
Percent 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	Up is Better	100%	100%	100%	100%	100%	100%

2019 Operations

Operations Header	Operations Title	Operations Description	Type of Operations
1 - Increase public confidence in the DC procurement process through the efficient, effective and fair disposition of public contracting disputes. (1 Activity)			
ADJUDICATION	Reduce the number of open appeal cases that are three years or older through docket review and strategic resource allocation	Working goal to reduce the number of cases that are three years or older to less than 5 percent.	Daily Service
2 - Increase use of Alternative Dispute Resolution (ADR) in resolving cases without the need for traditional litigation models, resulting in faster, more efficient dispositions of cases and greater party satisfaction. (1 Activity)			
ADJUDICATION	Increase use of ADR in resolving disputes before CAB through researching, developing and applying best practices in mediation and other alternative dispute resolution models	At the inception of each case, CAB encourages mediation/settlement through Scheduling Orders. Further, the Presiding Judge in each case encourages mediation/settlement during the pretrial conference. CAB will continue to build upon its capacity to offer meaningful settlement/mediation opportunities to litigants.	Daily Service
3 - Create and maintain a highly efficient, transparent and responsive District government through the digital archiving and electronic filing of all Board cases permitting web-based retrieval and full-text searching by the parties with pending cases and the public. (1 Activity)			
ADJUDICATION	Increase digital archiving and electronic filing of new cases to provide full-text searching and, therefore, greater transparency for litigants, the contracting community and the public	Completion of digital archiving and loading into the database of historical appeal and protest cases permitting web-based retrieval and full-text searching capability by the parties with pending cases and the public, while promoting electronic filing and uploading of documents in all newly filed cases.	Key Project

2019 Workload Measures

Measure	New Measure/Benchmark Year	Numerator Title	Units	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
1 - Reduce the number of open appeal cases that are three years or older through docket review and strategic resource allocation (2 Measures)								
Number of new cases filed		Number of new cases (protests and appeals) filed	number of cases	36	26	33	48	46

Measure	New Measure/ Benchmark Year	Numerator Title	Units	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Number of cases resolved	<input type="checkbox"/>							
Number of cases resolved	<input type="checkbox"/>	Number of cases resolved	number of cases	79	26	48	64	56
2 - Increase use of ADR in resolving disputes before CAB through researching, developing and applying best practices in mediation and other alternative dispute resolution models (2 Measures)								
Number of Scheduling Orders issued encouraging settlement	<input type="checkbox"/>	Number of Scheduling Orders issued encouraging settlement	number of orders	36	26	33	48	46
Number of cases resolved through settlement/voluntary withdrawal	<input type="checkbox"/>	Number of cases resolved through settlement/voluntary withdrawal	number of cases	43	8	35	31	31
3 - Increase digital archiving and electronic filing of new cases to provide full-text searching and, therefore, greater transparency for litigants, the contracting community and the public (3 Measures)								
Number of archived protest and appeals cases digitized and uploaded to the public website	<input type="checkbox"/>	Number of archive protest and appeals cases digitized and uploaded to the public website	number of cases	79	26	48	64	20
Number of new cases filed and processed electronically	<input type="checkbox"/>	Number of new cases filed and processed electronically	number of cases	36	26	33	48	46
Number of documents filed in new cases	<input type="checkbox"/>	Number of documents filed in new cases	number of documents	1,361	1,346	1783	1933	1461

2019 Strategic Initiatives

Strategic Initiatives

Strategic Initiative Title	Strategic Initiative Description	Proposed Completion Date
No strategic initiatives found		



**DC CONTRACT APPEALS BOARD
FY2018-2019 PERFORMANCE OVERSIGHT RESPONSES**

**ATTACHMENT 2
DC CONTRACT APPEALS BOARD
FY18 Performance Plan**

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Contract Appeals Board FY2018

Agency Contract Appeals Board

Agency Code AF0

Fiscal Year 2018

Mission The mission of the Contract Appeals Board (CAB) is to provide an impartial, expeditious, inexpensive, and knowledgeable forum for hearing and resolving contractual disputes, protests, and debarments and suspensions involving the District and its contracting communities.

2018 Strategic Objectives

Objective Number	Strategic Objective	# of Measures	# of Operations
1	Increase public confidence in the DC procurement process through the efficient, effective and fair disposition of public contracting disputes.	4	1
2	Increase use of Alternative Dispute Resolution (ADR) in resolving cases without the need for traditional litigation models, resulting in faster, more efficient dispositions of cases and greater party satisfaction.	1	1
3	Create and maintain a highly efficient, transparent and responsive District government through the digital archiving and electronic filing of all Board cases permitting web-based retrieval and full-text searching by the parties with pending cases and the public.**	11	1
TOT		16	3

2018 Key Performance Indicators

Measure	New Measure/ Benchmark Year	FY 2014 Actual	FY 2015 Target	FY 2015 Actual	FY 2016 Target	FY 2016 Actual	FY 2017 Target	FY 2017 Actual	FY 2018 Target
1 - Increase public confidence in the DC procurement process through the efficient, effective and fair disposition of public contracting disputes. (4 Measures)									
Percentage of pending cases that are three years old or less	<input type="checkbox"/>	80%	100%	71%	85%	75%	90%	92.9%	90%
Percentage of appeals resolved within 4 months of the cases being ready for decision	<input type="checkbox"/>	84%	90%	80%	90%	91.7%	90%	80%	90%
Percentage of Protests resolved within 60 business days	<input type="checkbox"/>	82%	95%	91%	95%	83.3%	95%	87%	95%
Percentage of decisions sustained on appeal	<input type="checkbox"/>	100%	100%	100%	100%	Not Available	100%	100%	100%
2 - Increase use of Alternative Dispute Resolution (ADR) in resolving cases without the need for traditional litigation models, resulting in faster, more efficient dispositions of cases and greater party satisfaction. (1 Measure)									

Percentage of cases resolved through settlement	<input type="checkbox"/>	Not available	Not available	Not Available	30%	72.9%	30%	48.4%	50%
3 - Create and maintain a highly efficient, transparent and responsive District government through the digital archiving and electronic filing of all Board cases permitting web-based retrieval and full-text searching by the parties with pending cases and the public.** (2 Measures)									
Percentage of new cases using electronic filing system	<input type="checkbox"/>	100%	100%	100%	100%	100%	100%	100%	100%
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	<input type="checkbox"/>	100%	100%	100%	100%	100%	100%	100%	100%

**We've revisited a project to standardize District wide measures for the Objective "Create and maintain a highly efficient, transparent and responsive District government." New measures will be tracked in FY18 and FY19 and published starting in the FY19 Performance Plan.

[2018 Operations](#)

Operations Header	Operations Title	Operations Description	Type of Operations	# of Measures	# of Strategic Initiatives
1 - Increase public confidence in the DC procurement process through the efficient, effective and fair disposition of public contracting disputes. (1 Activity)					
ADJUDICATION	Reduce the number of open appeal cases that are three years or older through docket review and strategic resource allocation.	Working goal to reduce the number of cases that are three years or older to less than 5%.	Daily Service	2	2
TOT				2	2
2 - Increase use of Alternative Dispute Resolution (ADR) in resolving cases without the need for traditional litigation models, resulting in faster, more efficient dispositions of cases and greater party satisfaction. (1 Activity)					
ADJUDICATION	Increase use of ADR in resolving disputes before CAB through researching, developing and applying best practices in mediation and other alternative dispute resolution models.	At the inception of each case, CAB encourages mediation/settlement through Scheduling Orders. Further, the Presiding Judge in each case encourages mediation/settlement during the pretrial conference. CAB will continue to build upon its capacity to offer meaningful settlement/mediation opportunities to litigants.	Daily Service	2	1
TOT				2	1
3 - Create and maintain a highly efficient, transparent and responsive District government through the digital archiving and electronic filing of all Board cases permitting web-based retrieval and full-text searching by the parties with pending cases and the public.** (1 Activity)					
ADJUDICATION	Increase digital archiving and	Completion of digital archiving and loading into the database	Key Project	3	1

electronic filing of new cases to provide full-text searching and, therefore, greater transparency for litigants, the contracting community and the public.	of historical appeal and protest cases permitting web-based retrieval and full-text searching capability by the parties with pending cases and the public, while promoting electronic filing and uploading of documents in all newly filed cases.					
TOT					3	1
TOT					7	4

2018 Workload Measures

Measure	New Measure/ Benchmark Year	FY 2014 Actual	FY 2015 Actual	FY2016 Actual	FY 2017 Actual
1 - Reduce the number of open appeal cases that are three years or older through docket review and strategic resource allocation. (2 Measures)					
Number of new cases filed	<input type="checkbox"/>	36	26	33	48
Number of cases resolved	<input type="checkbox"/>	79	26	48	64
2 - Increase use of ADR in resolving disputes before CAB through researching, developing and applying best practices in mediation and other alternative dispute resolution models. (2 Measures)					
Number of Scheduling Orders issued encouraging settlement	<input type="checkbox"/>	36	26	33	48
Number of cases resolved through settlement/voluntary withdrawal	<input type="checkbox"/>	43	8	35	31
3 - Increase digital archiving and electronic filing of new cases to provide full-text searching and, therefore, greater transparency for litigants, the contracting community and the public. (3 Measures)					
Number of archived protest and appeals cases digitized and uploaded to the public website	<input type="checkbox"/>	79	26	48	64
Number of new cases filed and processed electronically	<input type="checkbox"/>	36	26	33	48
Number of documents filed in new cases	<input type="checkbox"/>	1361	1346	1783	1933

Initiatives

Strategic Initiative Title	Strategic Initiative Description	Proposed Completion Date

Developing digital archiving and uploading production goals	In FY18 the Contract Appeals Board will continue, with the assistance of a new IT manager, the development of its digital archiving and uploading production goals and accompanying staff resource allocation plan in order to further the Board's commitment to the prompt dissemination and display of all materials in pending and closed cases (not subject to a protective order) to the public, resulting in greater transparency and confidence in government operations.	09-30-2018
Enhancing use of ADR and Settlement Capabilities	The Board will continue its commitment to the use of alternative dispute resolution (ADR) by researching and developing a template for a "best in class" ADR program. In this regard, the Board intends to continue to confer with key District stakeholders, and to review best practices across a wide spectrum of ADR knowledge experts, including our federal contract appeals board counterparts, the District of Columbia Court system, and public interest/private sector resources such as the National Center for State Courts, the Council for Court Excellence, the National Judicial College, and the Judicial Arbitration and Mediation Services of "JAMS".	09-30-2018
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. In FY18 the Board will continue to work with OCTO and its internal IT Staff to engage in on-going assessment of the Board's technology needs that will assist in the tracking and the efficient, effective and fair disposition of its docket.	09-30-2018



**DC CONTRACT APPEALS BOARD
FY2018-2019 PERFORMANCE OVERSIGHT RESPONSES**

**ATTACHMENT 3
DC CONTRACT APPEALS BOARD
ORGANIZATIONAL CHART
(Effective February 5, 2019)**

