

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CONTRACT APPEALS BOARD



MARC D. LOUD, SR.  
CHIEF ADMINISTRATIVE JUDGE

February 19, 2021

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

Dear Chairman White:

In response to your letter dated February 3, 2021, please find herein the DC Contract Appeals Board's responses to the Committee on Government Operations and Facilities' prehearing questions for the March 8, 2021, FY20 (and FY21 to date), performance oversight hearing. Per your request, I have submitted an electronic copy of responses via [facilities@dccouncil.us](mailto:facilities@dccouncil.us) 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,

/s/ Marc D. Loud, Sr.

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



## DC CONTRACT APPEALS BOARD RESPONSES

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 list any statutory mandates that the agency lacks sufficient resources to fully implement.

**Response:** Not applicable.

3. Please list all reporting requirements in the District of Columbia Code or Municipal Regulations that the agency is required to complete in FY 20 and FY 21, to date. For each requirement, please list the date the report was required and the date it was produced. If the agency did not produce the report on the mandated timeline, please explain why.

**Response:** Please see table below.

| Reporting Requirement                                | Due Date                    | Compliance (explanation) |
|--|-----------------------------|--------------------------|
| FOIA Report  | February 1 (annually)       | Yes                      |
| Performance Accountability Report                    | January 15 (annually)       | Yes                      |
| DSLBD CBE/SBE Spending Reports                       | Quarterly                   | Yes                      |
| EEO Officer/Counselor Reports                        | Monthly (15 <sup>th</sup> ) | Yes                      |
| Account Review Team (ART) Reports (PCard)            | Monthly (21 <sup>st</sup> ) | Yes                      |
| Key Performance Measures/Workload Report             | October 15 (annually)       | Yes                      |
| Public and Confidential Financial Disclosure Reports | May 15 (annually)           | Yes                      |

4. Please list and describe any regulations promulgated by the agency in FY 20 or FY 21, to date, and the status of each.

**Response:** On November 22, 2019, the Board issued a Notice of Proposed Rulemaking for the current Board rules, published at 66 D.C. Reg. 015488 (November 22, 2019). The revised rules harmonize the Board’s practice procedures with the Procurement Practices Reform Act of 2010, D.C. Code §§ 2-351.01 et seq. (and other applicable law). The Board submitted the rules for Final Rulemaking on January 31, 2020, published at 67 D.C. Reg. 001734 (February 21, 2020). These rules became effective April 6, 2020.

5. Please explain any significant impacts on your agency, if any, of any legislation passed at the federal or local level during FY 20 and FY 21, to date.

**Response:** Not applicable.

6. What are the agency’s top five priorities? Please explain how the agency expects to address these priorities in FY 21.

**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 listed priorities are dynamic in nature. The Board believes that if we focus on these priorities and adapt promptly to changing circumstances, our mission will be continuously fulfilled.

**1. Provide Maximum Efficiency in Services to All CAB Stakeholders During the Continuing COVID-19 Public Health Emergency**

The unprecedented Covid-19 public health emergency converted the Board into a digital only business environment. As a result, the Board’s physical location at One Judiciary Square has been closed since March 13, 2020. In lieu of a “physical” operation, all Board functions have been working digitally for the past 11 months. In said digital environment, the Board’s performance has been excellent, and on par with performance in non-pandemic years (see table below):

| DC Contract Appeals Board  | FY20   | FY19   | FY18   |
|--|--------|--------|--------|
| Cases Closed   | 36     | 36     | 56     |
| New Cases Filed  | 24     | 35     | 46     |
| Total Pages Filed  | 64,595 | 27,735 | 26,275 |
| Percentage of Protests Closed in 60 Business Days                | 94%    | 100%   | 91%    |
| Percentage of Appeals Closed w/ 4 Mos. of Readiness for Decision | 93%    | 79%    | 84%    |

One of the Board’s top five priorities is sustaining maximum efficiency in the continuing public health emergency so that all CAB litigants, employees, and other stakeholders in the CAB ecosystem perform optimally. Accomplishment of this objective will require the Board’s IT Director to (1) monitor the functionality and security of all Board electronic databases and provide prompt resolution to all equipment and systems issues. Accomplishment of this objective will also require that Board leadership monitor and address any fluctuations in overall case performance data and other performance indicia. Finally, remote work creates opportunities for CAB staff to feel isolated and disconnected from other staff for purposes of collaboration and fellowship. Thus, accomplishment of this objective requires Board leadership to foster strong internal and external communications through virtual staff *gatherings*, virtual staff meetings, and increased telephone and email contact/outreach.

**2. Preventing the Occurrence of Future Case Backlogs**

The Board will continue to prioritize pre-emptive measures and strong case management to prevent case backlogs on our docket. The Board does not currently have any backlogged cases, and has not had any for several years. Case backlogs undermine public confidence in the District’s contract dispute resolution process. Case backlogs also impair access to justice, as the unavailability of witnesses and documentary evidence can increase over time.

The Board will continue to implement the following measures in this regard:

- *Preventing Judge Vacancies.* The Board is authorized under the Procurement Practices Reform Act of 2010 (as amended) to have three 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 correlated to extended periods when one or more judge positions remained vacant (e.g., a single judge vacancy during the years FY06-FY10 created a severe 42 case appeals backlog). Because of the efforts of the Mayor, the Mayor’s Office of Talent and Appointments, and the Council of the District of Columbia, there are no current Board vacancies. The Board will continue working with all stakeholders to continue the current level of success in preventing Board vacancies.
- *Preventing Attorney Vacancies.* The Board has a voluminous docket, which included the filing of over 64,000 pages of litigation materials in FY20. Since FY13, the Board has been authorized to carry three permanent FTE attorney positions (one added in FY13 and two added in FY15). The three attorneys are experienced in government contracts law and provide research and writing support to Judges. These positions are critical to assist with case management and prompt case closure. 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 Or More Years Old.* 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 years from the date of initial filing; (4) case accountability meetings are held to prevent delays in case closure; (5) cases requiring trial should be closed within three years of the initial filing date (absent mitigating factors), and (6) all appeals cases are closed (through settlement, trial and/or written decision) within three years of the initial filing date.

### **3. Transparency: Continue Displaying All Board Case Records on the Public Website.**

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.<sup>1</sup> In FY20/21, the prompt website display (i.e., within three days of filing) of all materials filed in Board cases (not subject to protective order) remains a top priority. The Board will also continue to post all upcoming trial and pretrial hearing dates on its website calendar (presently updated through March 2022). With respect to the Board’s database of case records, we discuss briefly below the two types of case records (pending and closed files) to be uploaded to the Board’s public website.

*Display of Pending Case Files on CAB’s Website.* The first category of records uploaded to the Board website are those filed in pending cases. In FY20, parties filed 2,043 pleadings,

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<sup>1</sup> Michael Neibauer, *D.C. Contract Appeals Board Tackles Backlog*, WASHINGTON BUSINESS JOURNAL, Nov. 11, 2011, at BizBeat.

motions, contract documents and other materials with the Board totaling an unprecedented 64,595 pages. 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 FY20 and FY21 to date, all filed materials (except materials filed under protective order) were timely uploaded to the public website. Uploads are accomplished through the Board’s iManage Document Management system, which automates and simplifies the process. The upload of case files is reviewed monthly by the Chief Judge. The table below includes total filings and total pages filed with the Board in FY20. The table also compares FY20 filings to those from the previous four-year period (FY16-FY19).

|                 | FY20   | FY19   | FY18   | FY17   | FY16   |
|-----------------|--------|--------|--------|--------|--------|
| Documents Filed | 2,043  | 1,376  | 1,461  | 1,933  | 1,783  |
| Pages Filed     | 64,595 | 27,735 | 26,275 | 41,742 | 35,737 |

*Closed Files.* The second category of records to be uploaded to the Board website are drawn from closed cases filed prior to 1985 and consisted entirely of paper records prior to FY20-21. In FY20-21, the Board digitized 850,000 pages of such records through an outside vendor. Board staff are currently assessing, organizing, and developing a plan for the upload of these records to the website beginning in FY21. In addition, the Board has an additional 577,000 pages of paper case files still requiring digitization, which the Board intends to have digitized and uploaded within available resources once the public health emergency has abated.

**4. 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 FY20, the Board closed 94% of protests within the 60-business day timeline. In FY21 to date, the Board has closed 100% of protests within the 60-business day timeline. Although, several factors may extend case closure timelines (e.g., Motions for Continuance, multi-party protests, general Motions Practice, etc.), the Board will continue to strive for 100% compliance. In this regard, the Board conducts case accountability meetings to remain on track with closure deadlines.

**5. Assess the Board’s Current Technology Environment and Develop A Five-Year IT Strategic Plan to Support the Board’s Mission**

The Board needs to continue offering parties the opportunity to adjudicate all cases through e-file and serve technologies. The Board currently offers its litigants e-file and serve access through File & ServeXpress, an industry leader. The Board needs to continue storing all litigation case records on Board servers and populating those records to the public website through appropriate proprietary software. The Board currently stores litigation case records, and populates them to the public website, through iManage File Site and iManage Worksite Server software. The OCTO ECIS also provides secure cloud-based storage for Board case records. The Board’s Five-Year IT Strategic Plan needs to provide on-going assessment of the existing technology environment (described above). The Board’s Five-Year IT plan also needs to position the Board to update existing technologies as advancements are being made in the broader fields of document, court, and adjudication management. In April 2020, the Board hired an IT Director to support the Board’s mission and priorities in this regard. Although inundated with operational issues in FY20 due to remote work and the public health emergency, the IT Director will finalize the IT Strategic Plan in FY21- through the first quarter of FY22.

7. What metrics are 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 appeals cases decided within 4 months of the case being ready for decision.   |
| 3.   | Percentage of new cases using electronic filing system.   |
| 4.   | Percentage of decisions sustained on appeal.  |
| 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. |
| 6.   | Percentage of pending appeals cases that are 3 years old or less.   |
| 7.   | Percentage of cases resolved through settlement. <sup>2</sup>   |

8. Please provide a copy of the agency’s FY 20 performance plan if one was prepared. Please explain which performance plan objectives were completed in FY 20. If they were not completed, please provide an explanation.

**Response:** Please see Attachment 1. Except the single exception noted below, the Board completed all applicable performance plan objectives in FY20. Thus, the Board achieved its performance plan objectives of having 100% of its appeals cases three-years old or less; having 93% of its appeal cases decided within four months of being ready for decision; having 50% of all cases settled prior to trial or final written decision; electronically archiving 100% of Board cases closed in FY20; and having 94% of its protest cases decided within 60 business days of filing [against a 95% actual compliance target]. The Board did not achieve its 100% compliance target of having all cases initiated through electronic filing in FY20. In FY20, four cases were initiated by mail and/or email (resulting in an 83% compliance rate). No Board cases currently pending with DC courts were decided in FY20, hence that performance objective is not applicable in this reporting period.

9. Please provide a copy of your agency’s FY 21 performance plan as submitted to the Office of the City Administrator if one was prepared.

**Response:** Please see Attachment 2.

10. Please describe any new initiatives or programs that the agency implemented in FY 20 and FY 21, to date, to improve the operations of the agency. Please describe any funding utilized for these initiative or program and the results, or expected results, of each initiative.

**Response:** The Board did not implement any new initiatives or programs in FY20 or FY21 to date. (Of course, the Board like all District agencies, implemented mandatory telework in FY20-FY21 to date, in response to the unprecedented public health emergency.)

11. 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.

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<sup>2</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.

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:** Please see Attachment 3. As of October 1, 2019, the Board added the position of IT Director (Supervisory IT Specialist) to its organizational chart.

12. 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. All Judge positions are mandated by the Procurement Practices Reform Act of 2010. All CAB positions are critical to fulfillment of the Board's mission.

**Response:** Please see table below.

| Contract Appeals Board        |                             |                         |          |           |          |       |      |               |              |           |          |                |                |
|-------------------------------|-----------------------------|-------------------------|----------|-----------|----------|-------|------|---------------|--------------|-----------|----------|----------------|----------------|
| Schedule A - January 12, 2021 |                             |                         |          |           |          |       |      |               |              |           |          |                |                |
|                               | Title                       | Name                    | Posn Nbr | Hire Date | Vac Stat | Grade | Step | Salary        | Fringe 16.8% | Prgm Code | Activity | Reg/Temp/ Term | Funding Source |
| 1                             | ADMIN JUDGE                 | Parchment, Monica C     | 00064918 | 5/2/2011  | F        | 17    | 0    | \$ 190,076.77 | \$ 31,932.90 | 2001      | 2001     | Term           | Local          |
| 2                             | CHIEF ADMIN JUDGE           | Loud, Marc D.           | 00062412 | 8/3/2010  | F        | 18    | 0    | \$ 192,735.00 | \$ 32,379.48 | 1090      | 1010     | Term           | Local          |
| 3                             | General Counsel             | Poindexter, Mark D      | 00000171 | 7/27/2015 | F        | 15    | 5    | \$ 161,798.00 | \$ 27,182.06 | 2001      | 2001     | Reg            | Local          |
| 4                             | ADMIN JUDGE                 | Majett, Nicholas A      | 00005171 | 10/7/2019 | F        | 17    | 0    | \$ 190,076.77 | \$ 31,932.90 | 2001      | 2001     | Term           | Local          |
| 5                             | STAFF ASSISTANT             | House, Mia J            | 00018155 | 9/1/1988  | F        | 11    | 10   | \$ 79,314.00  | \$ 13,324.75 | 2001      | 2001     | Reg            | Local          |
| 6                             | Supervisory IT Specialist   | Daniel, Beulah          | 00084605 | 4/13/2020 | F        | 14    | 0    | \$ 149,000.00 | \$ 25,032.00 | 2001      | 2001     | Reg            | Local          |
| 7                             | Clerk of Court              | Tuttle, Thane Forrest   | 00071454 | 1/28/2013 | F        | 9     | 0    | \$ 133,972.67 | \$ 22,507.41 | 2001      | 2001     | Reg            | Local          |
| 8                             | Program Support Assistant   | Berry, Uday             | 00083258 | 9/22/2014 | F        | 8     | 6    | \$ 53,815.00  | \$ 9,040.92  | 2001      | 2001     | Reg            | Local          |
| 9                             | Attorney Advisor            | Edwards, Jason          | 00087635 | 8/12/2015 | F        | 14    | 5    | \$ 137,553.00 | \$ 23,108.90 | 2001      | 2001     | Reg            | Local          |
| 10                            | Attorney Advisor            | Roundtree, Portia Marie | 00071452 | 4/7/2014  | F        | 14    | 2    | \$ 125,415.00 | \$ 21,069.72 | 2001      | 2001     | Reg            | Local          |
| 11                            | Information Technology Spec | Ortiz, Angel            | 00102862 | 5/16/2018 | F        | 11    | 5    | \$ 69,429.00  | \$ 11,664.07 | 2001      | 2001     | Reg            | Local          |

13. 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.

14. 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 20 and FY 21, to date;

**Response:** Please see table below.

| CAB Staff Member  | Position                       | Justification    |
|-------------------|--------------------------------|------------------|
| Marc D. Loud, Sr. | Chief Administrative Judge     | Critical Contact |
| Nicholas Majett   | Administrative Judge           | Critical Contact |
| Monica Parchment  | Administrative Judge           | Critical Contact |
| Uday Berry        | Program Assistant/Receptionist | Critical Contact |
| Beulah Daniel     | IT Director                    | Critical Contact |
| Jason Edwards     | Attorney Advisor               | Critical Contact |

| CAB Staff Member | Position          | Justification    |
|------------------|-------------------|------------------|
| Mia House        | Appeals Clerk-ATC | Critical Contact |
| Manuel Ortiz     | IT Specialist     | Critical Contact |
| Mark Poindexter  | General Counsel   | Critical Contact |
| Portia Roundtree | Attorney Advisor  | Critical Contact |
| Thane Tuttle     | Clerk of Court    | 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 20 and FY 21, to date;

**Response:** Not applicable.

c. A list of travel expenses, arranged by employee for FY 20 and FY 21, to date, including justification for travel;

**Response:** Not applicable.

d. A list of total workers' compensation payments paid in FY 20 and FY 21, to date, including the number of employees who received workers' compensation payments, in what amounts, and for what reasons.

**Response:** Not applicable.

15. Please separately list each employee whose salary was \$100,000 or more in FY 20 and FY 21, 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 Board employees received overtime or bonus pay in FY20 or FY21 to date.

| Contract Appeals Board<br>FY 21 - Salaries Above \$100,000 |                           |                        |                 |       |      |               |              |           |          |
|--|---------------------------|------------------------|-----------------|-------|------|---------------|--------------|-----------|----------|
|  | Title                     | Name                   | Position Number | Grade | Step | Salary        | Fringe 16.8% | Prgm Code | Activity |
| 1  | ADMIN JUDGE               | Parchment,Monica C     | 00064918        | 17    | 0    | \$ 190,076.77 | \$ 31,932.90 | 2001      | 2001     |
| 2  | CHIEF ADMIN JUDGE         | Loud,Marc D.           | 00062412        | 18    | 0    | \$ 192,735.00 | \$ 32,379.48 | 1090      | 1010     |
| 3  | General Counsel           | Poindexter,Mark D      | 00000171        | 15    | 5    | \$ 161,798.00 | \$ 27,182.06 | 2001      | 2001     |
| 4  | ADMIN JUDGE               | Majett,Nicholas A      | 00005171        | 17    | 0    | \$ 190,076.77 | \$ 31,932.90 | 2001      | 2001     |
| 5  | Supervisory IT Specialist | Daniel,Beulah          | 00084605        | 14    | 0    | \$ 149,000.00 | \$ 25,032.00 | 2001      | 2001     |
| 6  | Clerk of Court            | Tuttle,Thane Forrest   | 00071454        | 9     | 0    | \$ 133,972.67 | \$ 22,507.41 | 2001      | 2001     |
| 7  | Attorney Advisor          | Edwards,Jason          | 00087635        | 14    | 5    | \$ 137,553.00 | \$ 23,108.90 | 2001      | 2001     |
| 8  | Attorney Advisor          | Roundtree,Portia Marie | 00071452        | 14    | 2    | \$ 125,415.00 | \$ 21,069.72 | 2001      | 2001     |

| Contract Appeals Board<br>FY 20 - Salaries Above \$100,000 |                           |                        |                 |       |      |               |              |           |          |
|--|---------------------------|------------------------|-----------------|-------|------|---------------|--------------|-----------|----------|
|  | Title                     | Name                   | Position Number | Grade | Step | Salary        | Fringe 16.8% | Prgm Code | Activity |
| 1  | ADMIN JUDGE               | Parchment,Monica C     | 00064918        | 17    | 0    | \$ 190,076.77 | \$ 31,932.90 | 2001      | 2001     |
| 2  | CHIEF ADMIN JUDGE         | Loud,Marc D.           | 00062412        | 18    | 0    | \$ 192,735.00 | \$ 32,379.48 | 1090      | 1010     |
| 3  | General Counsel           | Poindexter,Mark D      | 00000171        | 15    | 5    | \$ 161,798.00 | \$ 27,182.06 | 2001      | 2001     |
| 4  | ADMIN JUDGE               | Majett,Nicholas A      | 00005171        | 17    | 0    | \$ 190,076.77 | \$ 31,932.90 | 2001      | 2001     |
| 5  | Supervisory IT Specialist | Daniel,Beulah          | 00084605        | 14    | 0    | \$ 149,000.00 | \$ 25,032.00 | 2001      | 2001     |
| 6  | Clerk of Court            | Tuttle,Thane Forrest   | 00071454        | 9     | 0    | \$ 133,972.67 | \$ 22,507.41 | 2001      | 2001     |
| 7  | Attorney Advisor          | Edwards,Jason          | 00087635        | 14    | 5    | \$ 137,553.00 | \$ 23,108.90 | 2001      | 2001     |
| 8  | Attorney Advisor          | Roundtree,Portia Marie | 00071452        | 14    | 2    | \$ 125,415.00 | \$ 21,069.72 | 2001      | 2001     |

16. Please list in descending order the top 25 overtime earners in your agency in FY 20 and FY 21, 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.

17. For FY 20 and FY 21, 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.

18. 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 the anticipated date of completion of each agreement in bargaining.

**Response:** Not applicable.

19. Please provide a list of any training or continuing education opportunities made available to agency employees. For each 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:** Board Judges and staff participated in an extensive list of trainings during FY20 and FY21 to date. We have included most of the training opportunities below. The Board is pleased to supplement the list below with a complete list upon request.

| Training                                   | Date(s)              | Subject  | Training Provider                                  | Number of Agency Staff Participating                    |
|--|----------------------|--|--|---|
| DCHR Sexual Harassment Prevention          | 2018-ongoing         | Presentation on types of sexual harassment in the workplace and legal protections for victims of sexual harassment         | DCHR Virtual Training                              | Board and Staff   |
| BCABA Annual Program                       | October 22, 2019     | Presentations on key government contracts decisions and other recent developments in government contracts law and practice | BCABA (various moderators and panelists)           | 6 (Board Judges, Attorney Advisors and General Counsel) |
| West’s Government Contracts Year In Review | February 18-21, 2020 | Presentations on key government contracts decisions and other recent developments in government contracts law and practice | Thomson Reuters (various moderators and panelists) | 1 (Attorney Advisor)                                    |
| ALI Seminar                                | April 15, 2020       | Presentation on the impact of COVID-19 and Commercial Contracts  | ALI (various panelists)                            | 4 (Board Judges and Attorney Advisors)                  |

| Training   | Date(s)             | Subject  | Training Provider                          | Number of Agency Staff Participating                    |
|--|---------------------|--|--|---|
| DCHR Basics of Coronavirus/Basics of Contact Tracing                 | June 2020           | Presentation on nature, transmission and monitoring of COVID-19  | DCHR Virtual Training                      | Board and Staff   |
| Managing Courts in a Global Pandemic                                 | June 26, 2020       | Perspectives from around the world on Court Management in the Pandemic   | National Judicial College                  | 2 (Board and IT Staff)                                  |
| Capture & Digital Transformation in a Work from Anywhere Environment | July 9, 2020        | Trends in digital records preservation for WFH employers   | ARMA                                       | 2 (Judge/IT Staff)                                      |
| Annual DLSBD Training  | July 16, 2020       | Presentation on Agency CBE Goal Setting, Special Exceptions and FY20 Close-Out   | DSLBD Virtual Training                     | 1 (General Counsel)                                     |
| OCP Using and Managing PCard Training                                | October 8, 2020     | Presentation on PCard use, management and monitoring requirements  | OCP Virtual Training                       | 2 (Program Assistant and General Counsel)               |
| HSEMA DC Agency/Continuity of Operations Plan Training               | November 10, 2020   | Presentation on development and exercise of agency COOP plans  | HSEMA Virtual Training                     | 1 (General Counsel)                                     |
| BCABA Trial Practice Seminar   | December 3, 2020    | Government contracts practice presentation   | BCABA (various moderators and panelists)   | 7 (Board Judges, Attorney Advisors and General Counsel) |
| OCP Quickbase and Resource Training                                  | December 18, 2020   | Discussion regarding use of Quickbase for agency sanitation and PPE needs  | OCP Resource Coordinator for CAB           | 1 (General Counsel)                                     |
| PubKLaw Annual Review  | January 25-28, 2021 | Presentations on key government contracts decisions and other recent developments in government contracts law and practice | PubKLaw (various moderators and panelists) | 5 (Board Judges and Attorney Advisors)                  |

20. Does the agency conduct annual performance evaluations of all its employees? If so, who conducts such evaluations? If not, what steps are taken to ensure that all agency employees are meeting individual job requirements?

**Response:** The Chief Judge and Judges are given evaluation and feedback through the Case Accountability process. The Accountability process requires Judges/Attorneys to report at specific intervals on the status of assigned cases, and to address deviations from agreed upon deadlines. All staff have performance measures by which they are measured, and meet with the Chief Judge (or supervising Judge) in group and individual meetings to review performance. Performance measures for the new IT Director are being finalized and will be tied to measures in the IT Short Term and Long Term Strategic Plan.

21. Please describe what strategies the agency is using to improve employee retention.

**Response:** The Board has an excellent record with employee retention. As apparent from our answer to Question No. 12 above, the average job tenure of current CAB employees is 8.5 years. To sustain and improve employee retention, CAB will continue to provide competitive salaries, encourage professional development opportunities, and remain intentional about providing a collegial and supportive environment for all employees.

22. For FY 20 and FY 21, to date, what was the total agency cost for mobile communications and devices, including equipment and service plans?

**Response:** In FY20, the Board spent a total of \$7,966.05 for mobile communications and devices, including equipment and service plans. In FY21, the Board has spent \$1,541.45 for these services.

23. For FY 20 and FY 21, to date, please list all intra-District transfers to or from the agency.

**Response:** Not applicable.

24. For FY 20 and FY 21, 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:** For FY20 and FY21 (to date), there were no special purpose revenue funds maintained by, used by, or available for use by the Board.

25. For FY 20 and FY 21, 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 were made by Program Assistant Uday Berry as authorized by the Board.

| Entry No. | Post Date of Expenditure | Amount of Expenditure | General Purpose              |
|-----------|--------------------------|-----------------------|------------------------------|
| 1         | 10/3/2019                | \$2,400.00            | PubK Law Subscription        |
| 2         | 10/04/2019               | (\$12.36)             | Sales Tax Credit             |
| 3         | 10/17/2019               | \$57.96               | Cable                        |
| 4         | 10/21/2019               | \$300.00              | Professional Development     |
| 5         | 10/24/2019               | \$159.83              | Office Products and Supplies |

| Entry No. | Post Date of Expenditure                                     | Amount of Expenditure | General Purpose                           |
|-----------|--|-----------------------|---|
| 6         | 11/15/2019   | \$325.00              | Office Equipment Repair Services          |
| 7         | 11/15/2019   | \$57.96               | Cable                                     |
| 8         | 11/20/2019   | \$158.24              | Office Products and Supplies              |
| 9         | 11/21/2019   | \$349.00              | Recruitment Support                       |
| 10        | 11/21/2019   | \$60.00               | Recruitment Support                       |
| 11        | 11/22/2019   | \$1,300.00            | Court Appeals-Printing Support            |
| 12        | 12/10/2019   | \$215.00              | Office Products and Supplies              |
| 13        | 12/10/2019   | \$2,905.63            | Westlaw Subscription                      |
| 14        | 12/16/2019   | \$225.60              | Recruitment Support                       |
| 15        | 12/18/2019   | \$57.96               | Cable                                     |
| 16        | 12/23/2019   | \$349.00              | Recruitment Support                       |
| 17        | 01/10/2020   | (\$2,905.63)          | Westlaw Subscription Billing Credit       |
| 18        | 01/15/2020   | \$675.00              | Updated Board Judges Panel Website Photos |
| 19        | 01/15/2020   | \$167.00              | Office Services-Shredding                 |
| 20        | 01/17/2020   | \$2,905.63            | Westlaw Subscription Rebill               |
| 21        | 01/24/2020   | \$58.24               | Cable                                     |
| 22        | 01/31/2020   | \$205.76              | Office Products and Supplies              |
| 23        | 02/10/2020   | \$495.00              | Professional Development                  |
| 24        | 02/10/2020   | \$64.19               | Cable                                     |
| 25        | 02/13/2020   | \$96.50               | Office Products and Supplies              |
| 26        | 02/19/2020   | (\$2,905.63)          | Westlaw Subscription Billing Credit       |
| 27        | 02/28/2020   | \$102.88              | Office Products and Supplies              |
| 28        | 03/12/2020   | \$58.24               | Cable                                     |
| 29        | 03/18/2020   | \$794.61              | Office Products and Supplies              |
| 30        | 04/06/2020   | \$259.00              | Office Products and Supplies              |
| 31        | 04/06/2020   | \$58.24               | Cable                                     |
| 32        | 04/06/2020   | \$412.80              | Professional Development                  |
| 33        | 04/07/2020   | \$503.76              | Westlaw Subscription                      |
| 34        | 04/07/2020   | \$503.75              | Westlaw Subscription                      |
| 35        | 04/07/2020   | \$503.76              | Westlaw Subscription                      |
| 36        | 04/07/2020   | \$503.75              | Westlaw Subscription                      |
| 37        | 04/09/2020   | \$450.00              | Recruitment Consulting                    |
| 38        | 06/12/2020   | \$74.01               | Cable                                     |
| 39        | 07/20/2020   | (\$1.10)              | Cable-Credit                              |
| 40        | 07/23/2020   | \$890.61              | Westlaw Subscription                      |
| 41        | 11/11/2020   | \$400.00              | PubKLaw Subscription                      |
|           |  |                       |   |
|           | <b>Total FY20-FY21(through 2-10-2021) PCard Expenditures</b> | \$13,279.19           |   |

26. Please list and provide a copy of all memoranda of understanding (“MOU”) entered into by your agency during FY 20 and FY 21, 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:** Please see Attachment 4. 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 FY20 and FY21 to date with the Washington Convention and Sports Authority (WCSA) (entered into on January 5, 2010). MOUs were in effect in FY20 with the District of Columbia Health Benefit Exchange Authority (HBX) (entered into on June 23, 2015) and the District Department of Energy and Environment (DOEE) (entered into on August 19, 2015). In FY21, the WCSA MOU is continuing, and the DOEE and HBX MOUs terminated September 30, 2020, were updated and are now under final review. 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 FY20 the Board’s OCTO-ECIS MOU is continuing. On October 26, 2018, the Board entered into an eMOU with OCTO-ECIS for Office 365 Enterprise Licenses. That eMOU expired September 30, 2019.

27. Please list all open capital projects and capital projects in the financial plan under the agency’s purview, including the amount budgeted, actual dollars spent so far, any remaining balances, and the status of the project. In addition, please provide a description of any projects which are experiencing delays, or which 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 20 and the first quarter of FY 21. Please detail any over- or under-spending and if the agency had any federal funds that lapsed.

**Response:** Please see tables below. No federal funding has lapsed.

| FY 2020 EXPENDITURES                     |                        |                   |         |          |                         |                        |                      |                     |
|--|------------------------|-------------------|---------|----------|-------------------------|------------------------|----------------------|---------------------|
| Program Title                            | Activity Title         | Appropriated Fund | Program | Activity | FY 2020 Approved Budget | FY 2020 Revised Budget | FY 2020 Expenditures | Variance            |
| PERSONNEL                                | PERFORMANCE MANAGEMENT | 100               | 1010    | 1090     | \$ 218,558              | \$ 218,558             | \$ 225,075           | \$ (6,517)          |
| ADJUDICATION                             | ADJUDICATION           | 100               | 2001    | 2001     | \$ 1,605,131            | \$ 1,543,510           | \$ 1,534,934         | \$ 8,576            |
| <b>TOTAL</b>                             |                        |                   |         |          | <b>\$ 1,823,689</b>     | <b>\$ 1,762,068</b>    | <b>\$ 1,760,009</b>  | <b>\$ 2,059</b>     |
|  |                        |                   |         |          |                         |                        |                      |                     |
|  |                        |                   |         |          |                         |                        |                      |                     |
| FY 2021 EXPENDITURES<br>as of 12/31/2020 |                        |                   |         |          |                         |                        |                      |                     |
| Program Title                            | Activity Title         | Appropriated Fund | Program | Activity | FY 2021 Approved Budget | FY 2021 Revised Budget | FY 2021 Expenditures | Variance            |
| PERSONNEL                                | PERFORMANCE MANAGEMENT | 100               | 1010    | 1090     | \$ 225,114              | \$ 225,114             | \$ 60,474            | \$ 164,640          |
| ADJUDICATION                             | ADJUDICATION           | 100               | 2001    | 2001     | \$ 1,554,682            | \$ 1,554,682           | \$ 396,700           | \$ 1,157,982        |
| <b>TOTAL</b>                             |                        |                   |         |          | <b>\$ 1,779,796</b>     | <b>\$ 1,779,796</b>    | <b>\$ 457,174</b>    | <b>\$ 1,322,622</b> |

29. Please provide a list of all budget enhancement requests (including capital improvement needs) made for FY 20, FY 21, or FY 22. For each, include a description of the need and the amount of funding requested.



33. Please list each contract, procurement, and lease entered into or extended by your agency during FY 20 and FY 21, to date. For each contract, please provide the following information where applicable:

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

**Response:** Please see table below.

| FY(Issue Date)    | Purchase Order/Direct Voucher Payment   | Contracting Party            | Service                                | Amount    | Term | Competitively Bid   | Contract Monitor/Activity Results        | Funding Source |
|-------------------|---|------------------------------|--|-----------|------|---|--|----------------|
| FY20 (10-17-2019) | PO614064 (closed out by PO624685v2—6-10-2020)   | Walton and Green Consultants | Temp Support Services                  | \$5,000   | FY20 | OCP procurement – PO awarded to DCSS/SBE vendor                       | Mark Poindexter, CAB General Counsel/N/A | Local          |
| FY20 (12-4-2019)  | PO617616  | Total Office Products        | Annual Copier Service Agreement        | \$3,324   | FY20 | OCP procurement – PO awarded to DCSS/SBE vendor                       | Mark Poindexter, CAB General Counsel/N/A | Local          |
| FY20 (1-29-2020)  | PO620599 (vendor does not accept PCard payments)  | Younts Consulting            | Annual iManage Software Agreement      | \$817.91  | FY20 | OCP procurement – PO awarded to proprietary software vendor           | Mark Poindexter, CAB General Counsel/N/A | Local          |
| FY20 (1-21-2020)  | PO620072  | SupreTech                    | Document Scanning and Archival Support | \$112,549 | FY20 | OCP procurement – competitive bid contract awarded to DCSS/SBE vendor | Mark Poindexter, CAB General Counsel/N/A | Local          |
| FY20 (5-20-2020)  | PO620072v3 (\$2,000 additional funding for document retrieval preparation. Closed out in October, 2020) | SupreTech                    | Document Scanning and Archival Support | \$114,549 | FY20 | OCP procurement – competitive bid contract awarded to DCSS/SBE vendor | Mark Poindexter, CAB General Counsel/N/A | Local          |

| FY(Issue Date)    | Purchase Order/Direct Voucher Payment   | Contracting Party | Service   | Amount     | Term | Competitively Bid   | Contract Monitor/Activity Results        | Funding Source |
|-------------------|---|-------------------|---|------------|------|---|--|----------------|
|                   | prior to final delivery. New PO635402 created for remainder of \$6,549.40 in FY21 dollars.) |                   |   |            |      |   |  |                |
| FY20 (7-13-2020)  | PO626562  | Avid Systems, LLC | Staff Telework Laptops                          | \$4,976.40 | FY20 | OCP procurement – PO awarded to DCSS/SBE vendor                                     | Mark Poindexter, CAB General Counsel/N/A | Local          |
| FY20 (8-17-2020)  | PO628081 (vendor does not accept PCard payments)  | Younts Consulting | Software Technical Support                      | \$900      | FY20 | OCP procurement – PO awarded to proprietary software vendor                         | Mark Poindexter, CAB General Counsel/N/A | Local          |
| FY20 (10-6-2020)  | Direct Voucher DE632074   | Thomson Reuters   | Westlaw Subscription (May 1-September 30, 2020) | \$3,600    | FY20 | OCFO Direct Voucher Payment for subscription to proprietary legal research software | Mark Poindexter, CAB General Counsel/N/A | Local          |
| FY21 (11-18-2020) | PO635402  | SupreTech         | Document Archiving and Delivery                 | \$6,549.40 | FY21 | OCP procurement – PO awarded to DCSS/SBE vendor                                     | Mark Poindexter, CAB General Counsel/N/A | Local          |
| FY21 (12-9-2020)  | PO636746 (vendor does not accept PCard payments)  | Younts Consulting | Annual iManage Software Agreement               | \$817.91   | FY21 | OCP procurement – PO awarded to proprietary software vendor                         | Mark Poindexter, CAB General Counsel/N/A | Local          |
| FY21 (1-8-2021)   | PO638283 (vendor does not accept PCard payments)  | Younts Consulting | Software Technical Support                      | \$300      | FY21 | OCP procurement – PO awarded to proprietary software vendor                         | Mark Poindexter, CAB General Counsel/N/A | Local          |

34. What is your agency’s current adjusted expendable budget for CBE compliance purposes? How much has been spent with SBEs or CBEs? What percent of the agency’s current adjusted expendable budget has been spent with SBEs or CBEs?

**Response:** In FY20, the Board exceeded its adjusted approved SBE spending goal of \$64,709.05 by 189%. The Board’s FY21 adjusted expendable budget is \$24,787.37, with an adjusted approved SBE spending goal of \$12,393.69. In FY21 to date, the Board has had no spending with SBEs or CBEs. However, as part of an active Purchase Order (PO635402), \$6,549.40 is currently obligated for SBE use (please see the Board’s response Question 33). The Board has been imposing a limit on all NPS spending due to anticipated FY21 budget adjustments announced in 1QFY21.

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.

**Response:** Not applicable.

36. Please list all settlements entered into by the agency or by the District on behalf of the agency in FY 20 or FY 21, 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 20 and FY 21, 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 20 or FY 21, 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 20 and FY 21, 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, and follows the policies 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. The Board's General Counsel has been designated as its "Sexual Harassment Officer" or "SHO" to review and investigate such allegations as well as recommend appropriate disciplinary action and/or referrals. The Board received no sexual harassment allegations in FY20 and FY21 to date.

39. Please list and describe any spending pressures the agency experienced in FY 20 and any anticipated spending pressures for the remainder of FY 21. Include a description of the pressure and the estimated amount. If the spending pressure was in FY 20, describe how it was resolved, and if the spending pressure is in FY 21, describe any proposed solutions.

**Response:** The Board did not project any spending pressure in FY20 and is not projecting any spending pressure in FY21.

40. Please provide the number of FOIA requests for FY 20, and FY 21, 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 two FOIA requests in FY20 and has processed no FOIA requests in FY21 to date. The two FY20 FOIA requests were processed under the "other" disposition (i.e., no relevant information maintained by the Board). No FY20 requests were partially granted,

denied or pending. The FY20 FOIA requests required a total of 65 minutes and a fraction of one FTE to process. The total dollar amount expended for processing the FY20 FOIA requests was approximately \$84 (based on processor's FY20 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;

**Response:** CAB currently maintains 2 electronic databases.

**File & ServeXpress** – The process of case management involves a lot of information collection. To efficiently keep track of this information CAB uses File & Serve Xpress as the Case Management System. The File & ServeXpress database provides CAB with a central location to store and track all client data. Having the client information in one place makes it easy to visualize the data, create reports, and leverage the information collected. The database stores all incoming pleadings, motions, communications to the Board, and all outgoing notices, correspondence, and Board actions. It also includes monthly docket of current cases under the Board's jurisdiction; copies of decisions and final orders of the Board; and copies of the Board's rules. Additionally, information such as contact information, case notes, appointment scheduling and history, client communications, and billing information are also collected and stored in the database.

**iManage Document Management System** – CAB utilizes the iManage Document Management System for filing and archiving data and documents collected for past, ongoing, and future cases, and clients. The iManage system organizes and archives documents, manages cases and secures case data collected in File & ServeXpress. Additionally, it also includes information on version control, searches performed in the system, and access management (and also archives images and e-mails).

- b. The age of the system and any substantial upgrades that were made in FY 20 or FY 21, to date, or that are planned for the system;

**Response:** CAB installed and implemented File & Serve in 2002, in partnership with LexisNexis. LexisNexis File & Serve merged with CaseFileXpress to become a new company - File & ServeXpress. Since 2002, nearly all litigation before CAB has been through digital filing. File & ServeXpress is currently hosted by the vendor in the vendor's cloud data center. The vendor ensures that both the system hardware and software are current and on the latest version.

The iManage Document Management System was implemented in 2009. CAB engaged Younts Consulting to install the iManage Document Management software, which uploads case documents filed on File & ServeXpress to the Board's website in searchable format. Younts Consulting continues to provide maintenance on an "as needed" basis. The iManage Document Management system is currently hosted on 2 virtual servers at the OCTO Data Center (CABAPPPRD01 and CABSQPRD01). Both systems run on VMWare and the District supported Windows 2012 Server Version. CAB staff work along with OCTO staff members to proactively monitor and maintain the servers. Both servers meet the District's security and compliance requirements. In December 2020, CAB worked

with OCTO to upgrade both servers to new and supported Dell hardware because both virtual servers were hosted on out-of-warranty and old hardware. The iManage software was last updated in 2016 and is currently on version 9.0.

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

**Response:** Attorneys with cases before the Board have access to File & ServeXpress to litigate cases. This is done by creating a File & ServeXpress account through a link on the CAB website. Link: <https://cab.dc.gov/page/appeals-and-protests>. Attorneys can then log into File & ServeXpress using their login credentials to submit case related documents, communicate with the board, search for information, track case developments, review Board Orders/Decisions, etc.

The public can access all Board case materials populated to the public website at <https://cab.dc.gov/page/appeals-and-protests>.

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

**Response:** See responses above.

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 20 and FY 21, to date.

**Response:** Not applicable.

43. Please provide a list of all studies, research papers, reports, and analyses that the agency prepared or funded during FY 20 and FY 21, to date. Please submit a hard copy to the Committee of any study, research paper, report, or analysis that is complete.

**Response:** Not applicable.

44. Please list any task forces, committees, advisory boards, or membership organizations in which the agency participates.

**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 regional organization for Judges and litigation attorneys in the government contracts field. In FY20 and FY21 (remote presentation), CAB Judges and attorneys participated in joint training exercises, panel discussions, and case reviews with other BCABA members. Board and staff members are also associated with District of Columbia Bar Association (Government Contracts Section), the Bar of the Supreme Court of the United States, the National Forum for Black Public Administrators (DC Chapter) and the National Association of Women Judges American Bar Association (Judiciary and Public Contract Sections).

45. Please provide a list of each Board member, 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) |
| Nicholas A. Majett, Administrative Judge                   | September 17, 2019      | July 28, 2023 (R23-0209) |
| Monica C. Parchment, Administrative Judge                  | June 27, 2017           | July 28, 2021 (R22-0147) |

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

**Response:** Please see Attachment 4.

47. Please list the number of complaints filed by contractors with the Board in FY 20 and FY 21, to date.

**Response:** In FY20, seven contract disputes were filed with the Board. In FY21 to date, three contract disputes have been filed.

48. Please list the number of cases that were open at the beginning of FY 20, at the beginning of FY 21, 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 no later than three years after the initial filing date.

| Case Type                              | Cases Open on 10/1/19 (FY20) | Cases Open on 10/1/20 (FY21) | Cases Currently Pending (as of February 10, 2021) (average number of days open) |
|--|------------------------------|------------------------------|---|
| Protest                                | 4                            | 2                            | 0 (0)*  |
| Contractor Appeal                      | 14                           | 7                            | 5 (15 months)   |
| 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)   |

\*This calculation excludes cases as to which the Board issued final decisions in FY20/FY21 to date, including any wherein the final decision resulted in a remand to the Contract Officer.

49. 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 20 and FY 21, 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. 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                            | FY20 Cases Settled (average number of days from filing to settlement) | FY21 Cases Settled (average number of days from filing to settlement) |
|--------------------------------------|---|---|
| Protest                              | 6 (37)  | 0 (0)   |
| Contractor Appeal                    | 12 (374)  | 1 (508)   |
| 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) |
|--|-------|-------|

50. Please list the number of cases closed, and the average number of days closed cases were open, in FY 20 and FY 21, 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.

| Case Type                              | FY20 Cases Closed (average number of days from filing to resolution) | FY21 Cases Closed (average number of calendar days from filing to resolution) |
|--|--|---|
| Protest                                | 22 (45 business days)  | 3 (40 business days)*   |
| Contractor Appeal                      | 14 (376 calendar days)   | 3 (264 calendar days)   |
| 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)   |

\*This calculation excludes cases as to which the Board issued final decisions in FY20/FY21 to date, including any wherein the final decision resulted in a remand to the Contract Officer.

51. How many cases were resolved through the accelerated disposition procedure described in D.C. Official Code § 2-360.04(c) in FY 20 and FY 21, to date?

**Response:** None.

52. How many cases were resolved through the small claims procedure described in D.C. Official Code § 2-360.04(d) in FY 20 and FY 21, to date?

**Response:** None.

53. 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 20, and FY 21, to date, was the decision of the Board fully upheld? Overturned in part?

**Response:** Please see table below. The Board understands this question to refer to FY20 and FY21, to date, appeals. In FY20 one appeal was filed. No appeals have been filed in FY21 through February 10, 2021. During the relevant period, the decision of the Board was upheld (appeal was withdrawn), and no Board decisions have been overturned in whole or in part.

| 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      |
|--------------------------|---------------------------|--|--|---|------------------|
| FY20                     | 36                        | 1                                      | 1  | 0   | Appeal withdrawn |
| FY21 (through 2-10-2021) | 6                         | n/a                                    | n/a  | n/a   | n/a              |

54. In how many cases were the Board’s decisions on questions of fact set aside on appeal in FY 20 and FY 21, to date?

**Response:** None.

55. In how many cases in FY 20, and FY 21, 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:** None.

56. In how many cases in FY 20, and FY 21, 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:** Seven cases.

57. In how many cases in FY 20, and FY 21, 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:** None.

58. In how many cases in FY 20, and FY 21, 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:** Two cases.

59. How many protests were dismissed by the Board in FY 20 and FY 21, to date, for being frivolous?

**Response:** None.

60. Which cases, if any, appealed to the District of Columbia Court of Appeals were decided in FY 20, and FY 21, to date? Who appealed CAB’s decision in each case? What was the Court’s decision in each case?

**Response:** No appeals to the District of Columbia Court of Appeals were decided in FY20 and FY21 to date.

61. Is the current workload of cases manageable by the current number of Board members without creating a backlog of aged appeals?

**Response:** Yes. The current number of Board members and staff attorneys are sufficient to address the current workload and prevent creation of an appeals backlog.

62. In the last Committee Budget Report, the Committee recommended CAB collaborate with the United States Civilian Board of Contract Appeals to develop an alternative dispute resolution framework. Please provide an update on whether any progress has been made on this effort.

**Response:** In FY20, the Board partnered with Howard University School of Law to identify an intern to work with CAB on this issue. Unfortunately, the Howard program was terminated early due to the COVID-19 pandemic, and only modest progress was made developing an alternative dispute resolution framework. The Board will continue addressing this initiative in FY21.

63. Please provide an update on the status of CAB's ability to conduct hearings during the continuation of the pandemic and whether any of the previously rescheduled hearings have been conducted or whether they are still pending.

**Response:** In order to comply with social distancing and other requirements imposed by the public health emergency, the two Board trials scheduled for FY20 were postponed. At present, none of the trial dates for previously rescheduled hearings have passed. Due to the ongoing nature of the pandemic, the Board has opted to offer virtual hearings to parties as appropriate until it is safe to conduct in-court proceedings. The Board is currently working with the parties to identify possible dates in Summer 2021 for the rescheduled hearings.

64. Please update the Committee on the Board's progress with instituting virtual hearings since the last update received in September 2020.

**Response:** The Board continues to review all appropriate information previously collected in order to provide virtual hearings. During the month of May 2021, the Board intends to conduct internal virtual hearing exercises on Zoom to familiarize Judges and staff more fully with the process. As noted in our September 30, 2020, response to the Committee, the Board took two very significant steps towards implementation of virtual hearings in Fiscal Year 2021. First, the Board undertook a study period to determine what other Boards/courts are doing with respect to virtual hearings. In this regard, several specific reviews were made. First, CAB Judges, Attorneys and our General Counsel met with our counterparts on the federal Board of Contract Appeals by Zoom on May 21, 2020. The Board learned about Zoom's *government* platform for the conduct of trials, as the federal Board is on the *Zoom government* platform. The CAB Board also learned virtual practices for admitting and marking evidence, recording hearings, preserving the record for appeal, and granting public access. The Board's study period also included a July 2020 demonstration by CourtCall, a leading vendor for remote appearance/access technology. Additionally, Board Judges and staff collected information from Texas courts, and attended the National Judicial Council's virtual court adjudication training (June 2020) for background information.

As a result of the above, the Board completed a first draft (pre-decisional) *CAB Virtual Hearings Policies and Protocols Guide* for CAB Judges, staff, litigants and the public. The Guide addresses legal, policy and technology considerations relative to the conduct of virtual hearings, including but not limited to:

- *Fairness and Due Process* – Can the parties fairly and fully present their case in a remote hearing?
- *Credibility Evidence* – Can the Board adequately evaluate attorney/witness credibility in a remote hearing?
- *Consent* – Is party consent required to participate in a remote hearing? Should it be required? Could there be grounds for an appeal in our cases if consent were not requested and obtained?
- *Platform* – Which remote meeting platform is best suited for a hearing? Zoom? WebEx? Some other platform?
- *Record of Proceedings* – How should our proceedings be recorded? Can the recording be preserved? How many hours of recording time are available? How/where is the recording stored? Will a remote court reporter still be able to create an accurate record utilizing remote technology?
- *Public Access* – How will hearings remain open to the public while safeguarding confidential information?
- *Documents/Exhibits* – Should all pre-hearing/hearing documents anticipated to be entered into evidence be pre-marked and submitted prior to the proceeding? Should the pre-hearing/hearing documents be submitted via File&ServeXpress? Should such documents be emailed to the Clerk’s Office for distribution? Should there be a shared, indexed repository of the documents (e.g., GoogleDocs) that the Board and parties can share access as needed during the trial? If so, should the Board set up such a repository? How would such a repository be secured?

See also Attison Barnes III and Krystal Swendsboe, *Conducting Court Hearings Remotely: 12 Considerations*, LAW360 (Apr. 7, 2020), <https://www.law360.com/articles/1260629>. The next scheduled in-court CAB proceeding is scheduled for the summer of 2021. Prior to going live, the Board will have finalized its protocol and plans, conducted practice sessions with staff, and scheduled information sessions with litigants.

65. Please share a copy of the current draft of the CAB Virtual Hearings Policies and Protocols Guide.

**Response:** Please see Attachment 5.

66. Please update the Committee on whether any further progress has been made since the agency’s last performance oversight hearing on the digitizing and archiving project. The last update the Committee received was that 168 boxes of documents still required archiving.

**Response:** At present, the Board has scanned 850,000 pages of case records through the contract vendor. The scanned records are contained on password secured flash drives in the Board’s possession. In addition, there are 231 boxes of documents that require scanning. This figure includes the 160 boxes identified by the Board in previous communications with the Committee, and an additional 71 boxes that were returned to the Board on December 18, 2020 (at the Board’s request). The 71 boxes of returned documents exceeded the contract’s agreed upon scope of

850,000 scanned pages. We estimate that the total number of unprocessed boxes (231) represents approximately 577,500 additional pages that require scanning.<sup>3</sup>

Due to challenges presented by the COVID-19 pandemic, none of the 850,000 pages of documents already processed by the vendor were delivered directly to DC Archives upon completion as specified under the contract. Specifically, the DC Archives and its overflow facility, the Washington National Records Center in Suitland, have placed operational restrictions on deliveries during the public health emergency. Moreover, even upon adjustment in operational restrictions, the Board must work with the contract vendor to complete archival preparation as agreed under the contract and required by DC Archives.<sup>4</sup> The Board is currently in discussions with OCP's Contracting Officer and the vendor on the optimal path forward. In the interim, the Board is in the process of reviewing and preparing the 850,000 pages of scanned materials for initial upload to the Board's public case search website in FY21.

67. Please share the action plan consisting of short- and long-term goals that the agency's IT Director created after joining the agency.

**Response:** The IT Director was onboarded with CAB on April 23, 2020, amidst a global pandemic. From the IT Director's onboard date to the present, the Board has been working remotely. Given the unique situation in which the IT Director was onboarded, the immediate task for the IT Director was to ensure that all CAB staff members could work remotely with minimal day-to-day disruptions due to systems or equipment issues. As a result, the IT Director's short-term goals have been tied directly to addressing needs driven by remote work. The IT Director's over-arching short-term goal has been to provide staff members with devices, software and access to technology systems that allow seamless remote operations. (Upon joining the Board, the IT Director concluded that several CAB laptops were unsupported and therefore unsuitable for remote use. The Board worked with WebEOC to procure 5 new laptops for remote use. Additionally, working together with OCTO, the CAB IT Director oversaw deployment of VPN (Virtual Private Access) for CAB users which allowed remote access to secure CAB systems and network files. All staff were also provisioned with Office 365 collaborative tools including Teams, SharePoint and CISCO WebEx. Adobe Professional licenses, already installed on office desktops, were then installed on remote laptops. Apart from remote work issues, the IT Director also performed an automated deployment to upgrade Office 2010 to Office 2016 on all CAB devices both at office and remote locations, and worked with OCTO in October 2020 to upgrade the CAB network at our office location.

Given the on-going nature of the pandemic, and the host of related operational and security issues District wide (and agency specific), the CAB IT Director will continue to provide CAB users with all needed support for our systems, equipment, and devices. The CAB IT Director is also assessing long-term technology issues at the Board, and the Board will supplement this answer when the initial long-term plan has been developed. This review will include, but is not limited to, issues pertaining to Office license categories, Adobe licenses, remote courtroom technology, interactive forms, electronic databases, Alexa for business, Artificial Intelligence for simplified workflow, completion of the Board's initiative to scan and archive legacy records, and more.

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<sup>3</sup> For the purposes of the page estimates herein, the Board estimates that each box contains 2,500 pages.

<sup>4</sup> This issue may delay the Board from directly transferring its processed documents directly to DC Archives/Washington National Records Center when these facilities re-open fully to receive documents.

68. Please describe the status and efficiency of the Board's case management software. Are additional investments necessary to improve this software?

**Response:** File & ServeXpress is the official case management system at CAB. The Board is very satisfied with its case-management software. A determination as to whether additional investments are necessary to improve File & ServeXpress will be made as part of the CAB IT Director's long-term IT plan.

69. Has CAB received any protests or appeals of procurements related to the ongoing Public Health Emergency?

**Response:** No.

70. Please describe the operational challenges the agency has faced during the Public Health Emergency.

**Response:** Fortunately, most of the Board's core operations were both digital and remote prior to the public health emergency. Thus, litigants appearing before the Board have been able to initiate and continue lawsuits remotely through the Board's File & ServeXpress secured digital platform (or its predecessors) since 2002. Board Judges and staff have also been able to review case files remotely, and Board Judges have been able to issue Orders and Decisions through the File & ServeXpress platform without interruption. Similarly, the Board has been able to populate case files onto the public website remotely since 2009 through its iManage Document Management System. Thus, there have been no disruptions to the Board's continuous update of its public website with new pleadings and documents as new cases are filed. As regards the above, very few operational challenges were presented to the Board by the public health emergency.

Most Board staff, however, did not telework prior to the pandemic and most did not have appropriate computer laptops for remote work. The Board's single greatest operational challenge, therefore, was promptly equipping our team with the appropriate hardware and software to operate from home. This challenge was overcome by working collaboratively with the City Administrator's Office and WebEoc on laptop acquisition, and fostering good communication among team-members throughout the remote work period.

71. 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 wishes to thank the Mayor and Council for their leadership during the unprecedented public health emergency. The Board also thanks this Committee for its partnership in oversight, and for the opportunity to provide a status on FY20 and FY21 to date performance. The Board acknowledges the tremendous teamwork conducted at CAB in furtherance of our mission.





**DC CONTRACT APPEALS BOARD  
FY2020-2021 PERFORMANCE OVERSIGHT RESPONSES**

**ATTACHMENT 1  
DC CONTRACT APPEALS BOARD  
FY20 Performance Plan**

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# Contract Appeals Board FY2020

Agency Contract Appeals Board

Agency Code AFO

Fiscal Year 2020

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.

## 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. |

## Key Performance Indicators

| Measure  | Directionality | FY 2017 Actual | FY 2018 Actual          | FY 2019 Actual | FY 2020 Target |
|--|----------------|----------------|-------------------------|----------------|----------------|
| <b>1 - Increase public confidence in the DC procurement process through the efficient, effective and fair disposition of public contracting disputes. (4 Measures)</b>   |                |                |                         |                |                |
| Percent of Appeals resolved within 4 months of the cases being ready for decision  | Up is Better   | 80%            | 84.2%                   | 81.3%          | 90%            |
| Percent of Protests resolved within 60 business days   | Up is Better   | 87%            | 90.9%                   | 100%           | 95%            |
| Percent of decisions sustained on appeal   | Up is Better   | 100%           | No Applicable Incidents | 100%           | 100%           |
| Percent of pending Appeals that are three years old or less  | Up is Better   | 92.9%          | 86.7%                   | 100%           | 90%            |
| <b>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)</b>   |                |                |                         |                |                |
| Percent of cases resolved through settlement   | Up is Better   | 48.4%          | 55.4%                   | 55.6%          | 50%            |
| <b>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)</b> |                |                |                         |                |                |
| Percent of new cases using electronic filing system  | Up is Better   | 100%           | 100%                    | 100%           | 100%           |
| 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%           |

## Operations

| Operations Header  | Operations Title | Operations Description | Type of Operations |
|--|------------------|------------------------|--------------------|
| <b>1 - Increase public confidence in the DC procurement process through the efficient, effective and fair disposition of public contracting disputes. (1 Activity)</b> |                  |                        |                    |

| Operations Header   | Operations Title  | Operations Description  | Type of Operations |
|---|---|---|--------------------|
| 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        |

## ▼ Workload Measures

| Measure   | FY 2017 Actual | FY 2018 Actual | FY 2019 Actual |
|---|----------------|----------------|----------------|
| 1 - ADJUDICATION (2 Measures)   |                |                |                |
| Number of new cases filed   | 48             | 46             | 35             |
| Number of cases resolved  | 64             | 56             | 36             |
| 2 - ADJUDICATION (2 Measures)   |                |                |                |
| Number of Scheduling Orders issued encouraging settlement                                 | 48             | 46             | 35             |
| Number of cases resolved through settlement/voluntary withdrawal                          | 31             | 31             | 20             |
| 3 - ADJUDICATION (3 Measures)   |                |                |                |
| Number of archived protest and appeals cases digitized and uploaded to the public website | 64             | 20             | 0              |
| Number of new cases filed and processed electronically                                    | 48             | 46             | 35             |
| Number of documents filed in new cases  | 1933           | 1461           | 1376           |

## ▼ Strategic Initiatives

| Strategic Initiative Title  | Strategic Initiative Description | Proposed Completion Date |
|---|----------------------------------|--------------------------|
| 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 (2 Strategic initiatives) |                                  |                          |

| Strategic Initiative Title                                      | Strategic Initiative Description   | Proposed Completion Date |
|---|--|--------------------------|
| Completion of Scanning and Archiving of Pre E-Filed Board Cases | The Mayor and DC Council (as recommended by the Committee on Facilities and Procurement) allotted funding in FY20 for the Board to solicit contracting assistance to finalize scanning and archiving of remaining pre-filed cases at the Board.  | 09-30-2020               |
| CAB IT Director   | The Mayor and DC Council (as recommended by the Committee on Facilities and Procurement) allotted funding in FY20 for the Board to hire a senior IT Director to assist in bringing to the Board state-of-the-art courtroom technology related to e-filing, public accessibility, transparency and other mission-critical IT initiatives. | 09-30-2020               |



**DC CONTRACT APPEALS BOARD  
FY2020-2021 PERFORMANCE OVERSIGHT RESPONSES**

**ATTACHMENT 2  
DC CONTRACT APPEALS BOARD  
FY21 Performance Plan**

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# Contract Appeals Board FY2021

Agency Contract Appeals Board

Agency Code AF0

Fiscal Year 2021

**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.

## 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. |

## Key Performance Indicators

| Measure  | Directionality | FY 2018 Actual          | FY 2019 Actual | FY 2020 Actual          | FY 2021 Target |
|--|----------------|-------------------------|----------------|-------------------------|----------------|
| <b>1 - Increase public confidence in the DC procurement process through the efficient, effective and fair disposition of public contracting disputes. (4 Measures)</b>   |                |                         |                |                         |                |
| Percent of Protests resolved within 60 business days   | Up is Better   | 90.9%                   | 100%           | 94.1%                   | 95%            |
| Percent of decisions sustained on appeal   | Up is Better   | No Applicable Incidents | 100%           | No Applicable Incidents | 100%           |
| Percent of Appeals resolved within 4 months of the cases being ready for decision  | Up is Better   | 84.2%                   | 81.3%          | 92.9%                   | 90%            |
| Percent of pending Appeals that are three years old or less  | Up is Better   | 86.7%                   | 100%           | 100%                    | 90%            |
| <b>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)</b>   |                |                         |                |                         |                |
| Percent of cases resolved through settlement   | Up is Better   | 55.4%                   | 55.6%          | 50%                     | 50%            |
| <b>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)</b> |                |                         |                |                         |                |
| Percent of new cases using electronic filing system  | Up is Better   | 100%                    | 100%           | 83.3%                   | 100%           |
| 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%           |

## Operations

| Operations Header  | Operations Title | Operations Description | Type of Operations |
|--|------------------|------------------------|--------------------|
| <b>1 - Increase public confidence in the DC procurement process through the efficient, effective and fair disposition of public contracting disputes. (1 Activity)</b> |                  |                        |                    |

| Operations Header  | Operations Title  | Operations Description  | Type of Operations |
|--|---|---|--------------------|
| 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      |
| <b>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)</b>  |   |   |                    |
| 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      |
| <b>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)</b> |   |   |                    |
| 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        |

## Workload Measures

| Measure   | FY 2018 Actual | FY 2019 Actual | FY 2020 Actual |
|---|----------------|----------------|----------------|
| <b>1 - Reduce the number of open appeal cases that are three years or older through docket review and strategic resource allocation (2 Measures)</b>  |                |                |                |
| Number of new cases filed   | 46             | 35             | 24             |
| Number of cases resolved  | 56             | 36             | 36             |
| <b>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)</b>             |                |                |                |
| Number of Scheduling Orders issued encouraging settlement   | 46             | 35             | 24             |
| Number of cases resolved through settlement/voluntary withdrawal  | 31             | 20             | 18             |
| <b>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)</b> |                |                |                |
| Number of archived protest and appeals cases digitized and uploaded to the public website   | 20             | 0              | 0              |
| Number of new cases filed and processed electronically  | 46             | 35             | 21             |
| Number of documents filed in new cases  | 1461           | 1376           | 2043           |

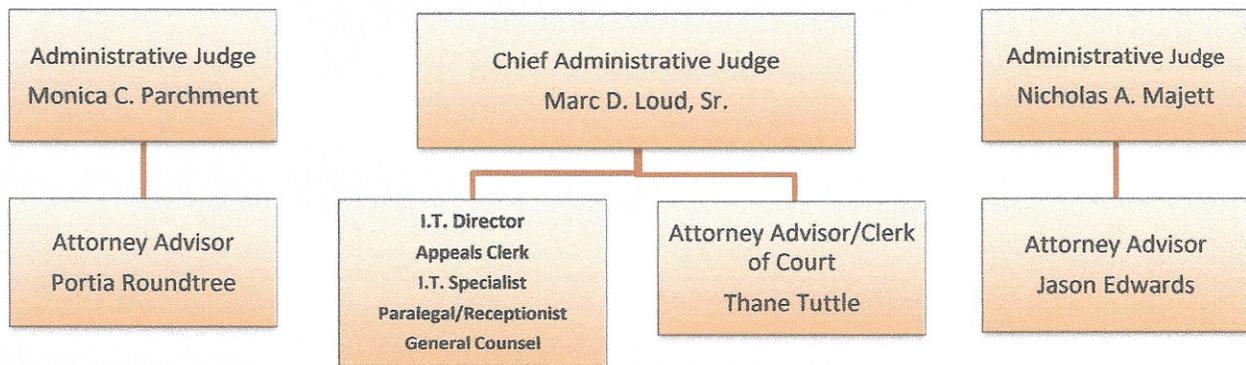
## Strategic Initiatives

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



**DC CONTRACT APPEALS BOARD  
FY2020-2021 PERFORMANCE OVERSIGHT RESPONSES**

**ATTACHMENT 3  
DC CONTRACT APPEALS BOARD  
ORGANIZATIONAL CHART  
(Effective February 10, 2021)**





**DC CONTRACT APPEALS BOARD  
FY2020-2021 PERFORMANCE OVERSIGHT RESPONSES**

**ATTACHMENT 4  
DC CONTRACT APPEALS BOARD  
CURRENT MEMORANDA OF UNDERSTANDING**

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OFFICE OF THE CHIEF TECHNOLOGY  
OFFICER  
GOVERNMENT OF THE DISTRICT OF COLUMBIA



MOU Routing Slip  
OCTO Executive Brief  
Form

|  |                                    |
|--|------------------------------------|
| OCTO Department: Infrastructure/ECIS   | Program Manager:<br>Anthony Watkis |
| Agency: District of Columbia Contract Appeals Board (CAB)  | Dollar Amount:<br>\$1,003.20       |
| Date Submitted: 10/26/2018   | eMOU#:<br>TO0AF0-2019-01134        |
| Project Description:<br>Office 365 Enterprise License  |                                    |
| Risks:<br>• None   |                                    |
| Challenges:<br>• None  |                                    |
| Urgency: <input type="checkbox"/> Normal <input type="checkbox"/> Rush <input type="checkbox"/> Expedite |                                    |

APPROVAL FLOW

| NAME/CORRESPONDENCE SYMBOL            | REQUIRED ACTION (S) | RELEASED |            |
|---------------------------------------|---------------------|----------|------------|
|                                       |                     | INITIAL  | DATE       |
| 1. Project Coordinator, Cheryl Harris | Required            | CH       | 10/26/2018 |
| 2. General Counsel, Pam Brown         | Required            | PB       | 10/26/2018 |
| 3. Chief of Staff, Carol Harrison     | Required            | CAH      | 10/26/2018 |
| 4. Interim CTO, Barney Krucoff        | Required            | BK       | 10/26/2018 |

|  |  |  |  |
|--|--|--|--|
| <b>OFFICE OF THE CHIEF TECHNOLOGY OFFICER</b><br>GOVERNMENT OF THE DISTRICT OF COLUMBIA<br>★ ★ ★<br><br> |  | <b>MOU Executive Brief</b><br><b>OCTO Division</b> |  |
| <b>OCTO Deputy/Executive:</b><br>Carol Harrison  |  | <b>Program Manager:</b><br>Anthony Watkis          |  |
| <b>Agency:</b><br>DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD (CAB)  |  | <b>Dollar Amount:</b><br>\$1,003.20                |  |
| <b>Date Submitted:</b><br>Oct 23 2018 4:26PM   |  | <b>eMOU#:</b><br>TO0AF0-2019-01134                 |  |
| <b>Project Description:</b><br>This MOU covers CAB for the costs of the Microsoft Office 365 Enterprise license for total of 11 E1 licenses. Cost provided through OCTO's global contract. This amount will be paid to DELL by OCTO on behalf of CAB.                      |  |  |  |
| <b>Risks:</b><br>None  |  |  |  |
| <b>Challenges:</b><br>Collect the fund ASAP  |  |  |  |
| <b>Urgency:</b> <input type="checkbox"/> Normal <input type="checkbox"/> Rush <input type="checkbox"/> Expedite  |  |  |  |



**MEMORANDUM OF UNDERSTANDING**  
BETWEEN  
**DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD**  
AND  
**DISTRICT OF COLUMBIA OFFICE OF THE CHIEF TECHNOLOGY  
OFFICER**  
**FOR FISCAL YEAR 2019**

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MOU Number: TO0AF0-2019-01134

**I. INTRODUCTION**

This Memorandum of Understanding ("MOU") is entered into between the **DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD (CAB or "Buyer Agency")** and the **District of Columbia OFFICE OF CHIEF TECHNOLOGY OFFICER ("OCTO" or "Seller Agency")**, collectively referred to herein as the "Parties" and individually as "Party."

**II. LEGAL AUTHORITY FOR MOU**

D.C. Official Code § 1-301.01(k);

**III. OVERVIEW OF PROGRAM GOALS AND OBJECTIVES**

This MOU covers CAB for the costs of the Microsoft Office 365 Enterprise license for total of 11 E1 licenses. Cost provided through OCTO's global contract. This amount will be paid to DELL by OCTO on behalf of CAB.

**IV. SCOPE OF SERVICES**

Pursuant to the applicable authorities and in the furtherance of the shared goals of the Parties to carry out the purposes of this MOU expeditiously and economically, the Parties hereby agree as follows:

**A. RESPONSIBILITIES OF SELLER AGENCY**

The Seller Agency shall:

- (1) Enter into (if it has not yet entered into) and maintain a contract with Microsoft or a certified Microsoft reseller under which Microsoft Office 365 Enterprise E1 cloud-based subscription plan services will be provided to each employee, contractor, or other Participating-Agency- designated person (hereinafter referred to as a "user") of Participating Agency, up to the number of users listed in Appendix A ;
- (2) Under the contract with Microsoft, OCTO shall ensure that the following minimum services will be provided to each user:
  - a. Email services through Outlook/Exchange online with a 50 GB mailbox per user (once the user's mailbox has been migrated to the cloud);

- b. OneDrive for Business with 1 TB of file storage per user;
- c. Skype for Business, allowing instant messages;
- d. Office Online only mode including Word, Excel, PowerPoint, and One Note;
- e. SharePoint Online; and
- f. Chat-based workplaces through Microsoft Teams

(3) OCTO shall provide a quarterly report to the Buyer agency. The quarterly report shall include the following information:

- a. The number of active Microsoft Office 365 Office Enterprise E1 user licenses provisioned to users within the Participating Agency;
- b. The total number of Microsoft Office 365 Office Enterprise E1 user licenses allocated to the Participating Agency (including both provisioned and unprovisioned licenses);
- c. The number of unprovisioned Microsoft Office 365 Office Enterprise E1 licenses allocated to the Participating Agency.

#### Appendix A

E1 Quantity :11 Unit Price : \$91.20

Total MOU cost for subscription: \$1,003.20

#### **B. RESPONSIBILITIES OF BUYER AGENCY**

The Buyer Agency shall make an intra-District transfer to OCTO as required by this MOU, in the amount set forth in Appendix A.

#### **V. DURATION OF MOU**

The duration of this MOU shall be for **Fiscal Year 2019**, and shall begin on the later of either **Oct 01, 2018**, or the last date of execution by the Parties, and shall expire on **Sep 30, 2019**, unless terminated in writing by the Parties prior to expiration pursuant to Section VII of this MOU.

#### **VI. FUNDING PROVISIONS**

##### **A. COST OF SERVICES**

The total cost for goods and/or services under this MOU shall not exceed **\$1,003.20** for Fiscal Year 2019. Funding for goods and/or services shall not exceed the actual cost of the goods and/or services provided, based on the rates provided in the budget, attached hereto as Appendix A.

#### Appendix A

E1 Quantity :11 Unit Price : \$91.20

Total MOU cost for subscription: \$1,003.20

#### **B. PAYMENT**

(1) Payment for the goods and/or services shall be made through an Intra-District advance by the Buyer

Agency to the Seller Agency based on the total amount of this MOU \$1,003.20.

a. Advances to the Seller Agency for the services to be performed and/or goods to be provided shall not exceed the actual costs of the goods or services or the amount of this MOU.

b. The Seller Agency shall receive the advance and bill the Buyer Agency through the Intra-District process only for those goods and/or services actually provided pursuant to the terms of this MOU.

(2) The Seller Agency shall provide the Buyer Agency with online access to listing of itemized services, as well as upon request of the Buyer Agency, which shall be available online at <https://services.dcnnet.dc.gov>.

(3) The Seller Agency shall:

a. Notify the Buyer Agency within forty-five (45) days prior to the close of the fiscal year if it has reason to believe that all of the advance will not be billed during the current fiscal year.

b. Return any excess advance to the Buyer Agency by September 30 of the current fiscal year.

(4) In the event of termination of this MOU, payment to the Seller Agency shall be held in abeyance until all required fiscal reconciliation, but not later than September 30 of the then current fiscal year.

### C. ANTI-DEFICIENCY CONSIDERATIONS

The Parties acknowledge and agree that nothing in this MOU creates a financial obligation in anticipation of an appropriation, and that all provisions of this MOU, or any subsequent agreement entered into by the Parties pursuant to this MOU, are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1351, (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01-355.08, (iii) D.C. Official Code § 47-105, and (iv) D.C. Official Code § 1-204.46, as the foregoing statutes may be amended from time to time, regardless of whether a particular obligation has been expressly so conditioned.

### VII. TERMINATION

Either Party may terminate this MOU in whole or in part by giving thirty (30) calendar days advance written notice to the other Party.

### VIII. NOTICES

The following individuals are the contact points for each Party:

#### CAB

Poindexter, Mark (CAB)

441 4<sup>th</sup> Street, NW, Suite 350-N  
Washington, DC 20001  
Phone: (202) 727-2841  
Email : mark.poindexter@dc.gov

#### OCTO

Anthony Watkis  
Program Manager  
200 1<sup>ST</sup> SE, 5th Floor  
Washington, D.C. 20003  
Phone : 202-727-7498  
Email :Anthony.Watkis@dc.gov

## **IX. MODIFICATIONS**

This MOU may be modified only upon prior written agreement of the Parties. Modifications shall be dated and signed by the authorized representatives of the Parties.

## **X. CONSISTENT WITH LAW**

The Parties shall comply with all applicable federal and District laws, rules and regulations whether now in effect or hereafter enacted or promulgated.

## **XI. COMPLIANCE AND MONITORING**

The Seller Agency will be subject to scheduled and unscheduled monitoring reviews to ensure compliance with all applicable requirements.

## **XII. RECORDS AND REPORTS**

The Seller Agency shall maintain records and receipts for the expenditure of all funds provided pursuant to this MOU for a period of no less than three (3) years from the date of expiration or termination of this MOU and, upon the Buyer Agency's or the District of Columbia's request, make these documents available for inspection by duly authorized representatives of the Buyer Agency or other officials of the District of Columbia as may be specified by the District of Columbia in its sole discretion.

## **XIII. PROCUREMENT PRACTICES ACT**

If a District of Columbia agency or instrumentality plans to utilize the goods and/or services of an agent, contractor, consultant or other third party to provide any of the goods and/or services under this MOU, then the agency or instrumentality shall abide by the provisions of the District of Columbia Procurement Practices Reform Act of 2010 (D.C. Official Code § 2-351.01, et seq.) to procure the goods or services.

## **XIV. RESOLUTION OF DISPUTES**

The Parties' Directors or designees shall resolve all adjustments and disputes arising from services performed under this MOU. The decision of the Parties' Directors related to any disputes referred shall be final. In the event that the Parties are unable to resolve a financial issue, the matter shall be referred to the D.C. Office of the Chief Financial Officer, Office of Financial Operations and Systems.

## **XV. CONFIDENTIAL INFORMATION**

The Parties to this MOU will use, restrict, safeguard and dispose of all information related to services provided by this MOU in accordance with all relevant federal and District statutes, regulations, and policies. Information received by either Party in the performance of responsibilities associated with the performance of this MOU shall remain the property of the Buyer Agency.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as follows:

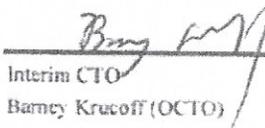
DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

  
\_\_\_\_\_

Date: 10/25/18

Marc Lodd

DISTRICT OF COLUMBIA OFFICE OF THE CHIEF TECHNOLOGY OFFICER

  
\_\_\_\_\_

Date: 10/30/18

Interim CTO  
Barney Krucoff (OCTO)

**INTRA-DISTRICT STANDARD REQUEST FORM**  
Government of District of Columbia

MOU Number: TO0AF0-2019-01134

Date of MOU: 10/23/2018

**Buyer Information**

Agency Name: CAB  
 Name: Marc D. Lund, Chief Judge  
 Name of Contact:  
 Telephone #: (202) 727-2841  
 MDL 10/25/18  
 202-727-6597

Agency Code: AFO  
 Address: 717 14th Street NW  
 MDL 10/25/18  
 441 4th St., NW.  
 Suite 350N  
 Washington, D.C.  
 20001  
 Fax #:  
 Date: 10/25/18

Signature: 

**Seller Information**

Agency Name: OCTO  
 Name of Contact:  
 Telephone #:

Agency Code: TO0  
 Address: 200 I ST, SE WASHINGTON, DC 20003  
 Fax #:  
 Date:

Signature: \_\_\_\_\_

**Service Information and Funding Codes**

GOOD/  
SERVICE:

**Buyer**

| AGY | YR | ORG | FUND | INDEX | PCA | OBJ | AOBJ | GRANT | PROJ | AG1 | AG2 | AG3 | AMOUNT |
|-----|----|-----|------|-------|-----|-----|------|-------|------|-----|-----|-----|--------|
|-----|----|-----|------|-------|-----|-----|------|-------|------|-----|-----|-----|--------|

**Seller**

| AGY | YR | ORG | FUND | INDEX | PCA | OBJ | AOBJ | GRANT | PROJ | AG1 | AG2 | AG3 | AMOUNT |
|-----|----|-----|------|-------|-----|-----|------|-------|------|-----|-----|-----|--------|
|-----|----|-----|------|-------|-----|-----|------|-------|------|-----|-----|-----|--------|

eMOU Approval History

10/23/2018 4:27:54  
PM

TO0AF0-2019-01134

| Step Name         | Name               | Status Name | Status Date           | Comments |
|-------------------|--------------------|-------------|-----------------------|----------|
| MOU Author Review | Shimul Saha (OCTO) | Approved    | 10/23/2018 4:27:45 PM |          |

OFFICE OF THE CHIEF TECHNOLOGY OFFICER

GOVERNMENT OF THE DISTRICT OF COLUMBIA



MOU Executive Brief  
OCTO Division

OCTO Deputy/Executive:

Carol Washington

Program Manager:

Anthony Watkis

Agency:

Contract Appeals Board (CAB)

Dollar Amount:

\$11,951.11

Date Submitted:

Mar 29 2017 3:22PM

eMOU#:

TO0AF0-2017-0900

Project Description:

CAB has requested OCTO ECIS to migrate App and file server to the OCTO environment from CAB environment. OCTO will provide two new windows VM and one SQL vm with additional resources for this migration.

Risks:

none

Challenges:

none

Urgency:

Normal

Rush

Expedite

**MEMORANDUM OF UNDERSTANDING**  
BETWEEN  
**CONTRACT APPEALS BOARD**  
AND  
**OFFICE OF THE CHIEF TECHNOLOGY OFFICER**  
FOR FISCAL YEAR 2017

---

MOU Number: TO0AF0-2017-0900

**I. INTRODUCTION**

This Memorandum of Understanding (this "MOU") is entered into between the **Contract Appeals Board**, ("CAB" or "Buyer Agency") and the **Office of the Chief Technology Officer**, ("OCTO" or "Seller Agency"), collectively referred to herein as the "Parties".

**II. LEGAL AUTHORITY FOR MOU**

D.C. Official Code § 1-301.01(k) (2011Supp.).

**III. OVERVIEW OF PROGRAM GOALS AND OBJECTIVES**

CAB has requested OCTO Enterprise Cloud and Infrastructure Services, ECIS to migrate their Application and file server to the OCTO environment. OCTO will provide two (2) new windows VM and one (1) SQL vm with additional resources for this migration.

**IV. SCOPE OF SERVICES**

Pursuant to the applicable authorities and in the furtherance of the shared goals of the Parties to carry out the purposes of this MOU expeditiously and economically, the Parties hereby agree as follows:

**RESPONSIBILITIES OF SELLER AGENCY**

Seller Agency is responsible to provide the resource below:

1. One (1) File server with ( 2 CPU, 2GB RAM, 875 GB storage and backup , OS 2012).
2. One (1) Application server with ( 2 CPU, 4GB RAM, 326 GB Storage and Backup , OS 2012).
3. One (1) SQL server with ( 2 CPU, 4GB RAM 320 GB Storage and Backup, SQL2012).

## **RESPONSIBILITIES OF BUYER AGENCY**

CAB and\ or its application vendors will be responsible for installing and configuring individual applications\ systems and databases on servers.

## **V. DURATION OF THIS MOU**

### **PERIOD**

The period of this MOU shall be for **Fiscal Year 2017** from **Oct 01, 2016** through **Sep 30, 2017** unless terminated in writing by the Parties pursuant to Section XI of this MOU.

### **EXTENSION**

N/A

## **VI. FUNDING PROVISIONS**

### **COST OF SERVICES**

Total cost for goods and/or services under this MOU shall not exceed **\$11,951.11** for **Fiscal Year 2017**.

### **PAYMENT**

Payment for the actual cost of the goods and/or services shall be made through an Intra-District advance by Buyer Agency to Seller Agency based on the total amount of this MOU.

### **ANTI-DEFICIENCY CONSIDERATIONS**

The Parties acknowledge and agree that nothing in this MOU creates a financial obligation in anticipation of an appropriation and that all provisions of this MOU, or any subsequent agreement entered into by the parties pursuant to this MOU, are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1351, (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01-355.08, (iii) D.C. Official Code § 47-105, and (iv) D.C. Official Code § 1-204.46, as the foregoing statutes may be amended from time to time, regardless of whether a particular obligation has been expressly so conditioned.

## **VII. AMENDMENTS AND MODIFICATIONS**

This MOU may be amended or modified only upon prior written agreement of the Parties. Amendments or modifications shall be dated and signed by the authorized representatives of the Parties.

## **VIII. CONSISTENT WITH LAW**

The Parties shall comply with all applicable laws, rules and regulations whether now in effect of hereafter enacted or promulgated.

## IX. COMPLIANCE AND MONITORING

Seller Agency will be subject to scheduled and unscheduled monitoring reviews to ensure compliance with all applicable requirements.

## X. RECORDS AND REPORTS

Seller Agency shall maintain records and receipts for the expenditure of all funds provided pursuant to this MOU for a period of no less than three years from the date of expiration or termination of this MOU and, upon the District of Columbia's request, make these documents available for inspection by duly authorized representatives of Buyer Agency and other officials as may be specified by the District of Columbia in its sole discretion.

## XI. TERMINATION

Either Party may terminate this MOU in whole or in part by giving [ 14 ] calendar days advance written notice to the other Party. In the event of termination of this MOU, payment to the Seller Agency shall be held in abeyance until all required fiscal reconciliation, but not later than September 30 of the then current fiscal year.

## XII. NOTICES

The following individuals are the contact points for each Party:

**Contract Appeals Board**

**Poindexter, Mark (CAB)**

**(202) 727-2841**

**mark.poindexter@dc.gov**

**Office of the Chief Technology Officer**

**Anthony Watkis**

**Anthony.Watkis@dc.gov**

## XIII. PROCUREMENT PRACTICES REFORM ACT

If a District of Columbia agency or instrumentality plans to utilize the goods and/or services of an agent, contractor, consultant or other third party to provide any of the goods and/or services under this MOU, then the agency or instrumentality shall abide by the provisions of the District of Columbia Procurement Practices Reform Act of 2010 (D.C. Official Code § 2-351.01, *et seq.*) to procure the goods or services.

## XIV. RESOLUTION OF DISPUTES

The Director of CAB and the Chief Technology Officer, or their designees, shall resolve all disputes and/or adjustments resulting from goods or services provided under this MOU. In the event the parties cannot resolve a dispute, the matter shall be referred to City Administrator. The decision of the City Administrator related to any disputes referred shall be final. In the event the Parties are unable to resolve a financial issue, the matter shall be referred to the Office of Financial Operations and Systems.

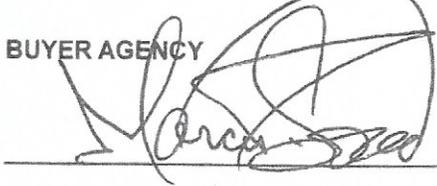
**XV. CONFIDENTIAL INFORMATION**

The Parties to this MOU will use, restrict, safeguard and dispose of all information related to services provided by this MOU in accordance with all relevant federal and local statutes, regulations, and policies. Information received by either Party in the performance of responsibilities associated with the performance of this MOU shall remain the property of the Buyer Agency.

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IN WITNESS WHEREOF, the Parties hereto have executed this MOU as follows:

A. BUYER AGENCY

  
\_\_\_\_\_ (Chief Judge)

Date: 6/12/17

CONTRACT APPEALS BOARD, DISTRICT OF COLUMBIA

B. SELLER AGENCY

\_\_\_\_\_

Date:

OFFICE OF THE CHIEF TECHNOLOGY OFFICER

# INTRA-DISTRICT STANDARD REQUEST FORM

Government of District of Columbia

MOU Number: TO0AF0-2017-0900

Date of MOU: 04/03/2017

## Buyer Information

Agency Name: Contract Appeals Board

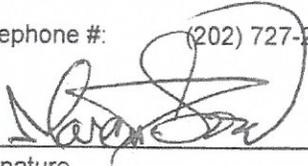
Agency Code: AF0

Name of Contact:

Address: 717 14th Street NW

Telephone #: (202) 727-2841

Fax #:



Date: 6/12/17

Signature

## Seller Information

Agency Name: Office of the Chief Technology Officer

Agency Code: TO0

Name of Contact:

Address: 200 I ST, SE WASHINGTON, DC

Signature

Date:

## Service Information and Funding Codes

GOOD/ SERVICE:

### Buyer

| AGY | YR | ORG | FUND | INDEX | PCA | OBJ | AOBJ | GRANT | PROJ | AG1 | AG2 | AG3 | AMOUNT |
|-----|----|-----|------|-------|-----|-----|------|-------|------|-----|-----|-----|--------|
|-----|----|-----|------|-------|-----|-----|------|-------|------|-----|-----|-----|--------|

### Seller

| AGY | YR | ORG | FUND | INDEX | PCA | OBJ | AOBJ | GRANT | PROJ | AG1 | AG2 | AG3 | AMOUNT |
|-----|----|-----|------|-------|-----|-----|------|-------|------|-----|-----|-----|--------|
|-----|----|-----|------|-------|-----|-----|------|-------|------|-----|-----|-----|--------|

# eMOU Approval History

6/12/2017 10:39:55AM

TO0AF0-2017-0900

| Step Name                       | Name                        | Status   | Status Date         | Comments           |
|---------------------------------|-----------------------------|----------|---------------------|--------------------|
| MOU Author Review               | Shimul Saha (OCTO)          | Approved | 3/29/2017           |                    |
| OCTO Program Manager Review     | Anthony Watkis (OCTO)       | Approved | 3/29/2017           |                    |
| OCTO General Counsel Review     | Brown, Pamela (DCHR) (OCTO) | Approved | 4/3/2017 7:51:41PM  |                    |
| Deputy CTO Review               | Carol Washington (OCTO)     | Approved | 4/26/2017           |                    |
| OCTO PMO Quality Control Review | Khaled Falah (OCTO)         | Approved | 4/26/2017           |                    |
| OCFO General Counsel Review     | Mills, Stacie (OCFO) (OCFO) | Approved | 4/27/2017 4:33:11PM | legally sufficient |
| Strategic Investments Review    | Tehsin Faruk (OCTO)         | Approved | 5/6/2017 11:53:42AM |                    |

**MEMORANDUM OF AGREEMENT BETWEEN  
DISTRICT OF COLUMBIA HEALTH BENEFIT EXCHANGE AUTHORITY  
AND  
DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD**

Pursuant to the authority of § 2-360.03(b) of the Procurement Practices Reform Act of 2010, effective April 8, 2011 ("PPRA," D.C. Law 18-371; D.C. Official Code § 2-360.03(b)) and D.C. Official Code § 1-301.01(k) and §31-3171.06(d)(1), the District of Columbia Health Benefit Exchange Authority ("HBX") and the District of Columbia Contract Appeals Board ("CAB") agree that CAB shall serve as the hearing tribunal for HBX claims and appeals. This memorandum of agreement ("MOA") is made in accordance with the following terms and provisions:

1. Under the Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2012 (D.C. Law 19-94; D.C. Official Code § 31-3171.01 et seq.) as amended by the Procurement Practices Reform Exemption Amendment Act of 2014, effective March 14, 2014 (D.C. Law 20-271; D.C. Official Code § 31-3171.04 and § 2-351.01 et seq.), HBX has procurement authority independent of the Office of Contracting and Procurement, subject to only certain provisions of the PPRA. Consistent with this authority, on September 10, 2014, the Health Benefit Exchange Authority Board adopted the District of Columbia Health Benefit Authority Contracting and Procurement Policies and Procedures (September 10, 2014) (available at <http://hbx.dc.gov/node/476592>) (hereinafter the "HBXCPP") to govern procurements of goods and services undertaken by the Authority, including procedures for protests, remedial actions and prohibited conduct. HBX has requested the CAB to serve as the hearing tribunal for appeals and HBX claims.

2. The CAB shall have jurisdiction to review and determine de novo appeals of final HBX decisions by the Executive Director or designated procurement officer and HBX claims consistent with D.C. Code § 2-360.03(a). The CAB acknowledges that HBX is exempt from the PPRA pursuant to D.C. Code § 2-351.05(c) (17). The parties agree that the HBXCPP will govern substantive issues on appeal and claims, as applicable, while the CAB proceedings will be governed by the Board's Rules of Procedure.

3. The CAB shall provide (a) the necessary services of its judges, and (b) the necessary services of its staff and all appropriate resources pursuant to the terms of this agreement, consistent with the manner in which CAB provides such services in cases under the PPRA. HBX is responsible for providing a court reporter for transcribing hearings as requested by CAB and per CAB rules. Periodic status conferences may be held telephonically and may not require a court reporter.

4. All services will be provided on a cost reimbursable basis, in an amount not to exceed \$25,000 per fiscal year. This amount may be increased by agreement of the parties, to reimburse the CAB for necessary services exceeding \$25,000 per fiscal year. Payment shall be made in accordance with the following terms:

a. HBX will reimburse CAB for the actual costs of services as follows: each panel judge's actual hours spent on the case (with a supporting brief entry of the work that is provided and hourly time billed to hour increments) multiplied by the sum of: (i) the judge's hourly salary rate, plus (ii) the applicable fringe benefits on the hourly salary rate as determined by the Office of Finance and Resource Management ("OFRM"), plus (iii) an overhead rate of 25 percent of the judge's hourly salary rate (this covers reimbursement for all CAB resources provided under Paragraph 3 above). In addition, the actual hours spent on the case by the CAB General Counsel and Attorney-Advisor shall be reimbursable multiplied by the sum of the applicable hourly rate including fringe benefits. Reimbursement for services rendered shall be calculated using the salary and fringe benefit amounts effective at the time services are rendered.

b. CAB shall submit invoices to HBX on a quarterly basis, and HBX shall make prompt and full payment upon presentation of properly invoiced amounts. HBX payments shall be by check payable to the District of Columbia Treasurer, and shall include the unique HBX Tax ID number, 46-1542132.

c. Payment will be made only upon presentation of properly invoiced amounts containing supporting entries indicating the work provided and corresponding hourly increments, in accordance with the terms of this MOA. The cost elements of each assigned dispute from HBX for which services are provided by CAB will be kept separate by CAB docket number.

5. The CAB and HBX may extend the term of this MOA by exercising a maximum of five (5) one (1) year option periods. The total term of this MOA, including the exercise of any option clause, may not exceed six (6) years. The parties agree that this MOA shall expire on September 30 annually and shall automatically renew, unless terminated with thirty (30) days written notice by either party.

6. The exercise of an option period is subject to the availability of funds at the time of the exercise of the option.

7. This MOA may be amended or modified only upon prior written agreement of the Parties. Amendments or modifications shall be dated and signed by the authorized representatives of the Parties. Either Party may terminate this MOA in whole or in part by giving ninety (90) calendar days advance written notice to the other Party. In the event of termination of this MOA, payment to CAB shall be held in abeyance until all required fiscal reconciliation, but not later than September 30 of the then current fiscal year.

8. Sections 6 and 7 notwithstanding, in the event of termination of this MOA, this MOA shall continue to apply to any matters being adjudicated by CAB pursuant to this agreement.

9. The Parties acknowledge and agree that nothing in this MOA creates a financial obligation in anticipation of an appropriation and that all provisions of this MOA, or any subsequent agreement entered into by the Parties pursuant to this MOA, are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1351, (ii) the District of Columbia Anti-deficiency Act, D.C. Official Code §§ 47-355.01-355.08, (iii) D.C. Official Code § 47-105, and (iv) D.C. Official Code § 1-204.46, as the foregoing statutes may be amended from time to time, regardless of whether a particular obligation has been expressly conditioned.

10. As this MOA is funded by the District of Columbia and to the extent this MOA is funded by the federal government, the Parties acknowledge that they may be subject to scheduled and unscheduled monitoring reviews and audits.

11. CAB shall maintain records and receipts for the expenditure of all funds provided pursuant to this MOA for a period of no less than two years from the date of expiration or termination of this MOA and, upon the District of Columbia's request or the federal government requests, make these documents available for inspection by duly authorized representatives of HBX and other officials as may be specified by HBX or the District of Columbia in their sole discretion.

12. The Parties to this MOA will use, restrict, safeguard and dispose of all information related to services provided by this MOA in accordance with all relevant federal and local statutes, regulations, and policies.

13. The Directors for the respective agencies, or their designees, shall resolve all disputes and/or adjustments resulting from goods or services provided under this MOA. In the event the Parties are unable to resolve a financial issue, the matter shall be referred to the Office of Financial Operations and Systems.

14. If goods or services of an agent or third party (e.g., contractor, consultant) are necessary under this Agreement:

- a. CAB shall abide by the provisions of the PPRA to procure the goods or services;
- b. HBX shall abide by the provisions of the HBXCPP to procure the goods or services of the agent or third party.

15. The points of contact responsible for administration of this MOA are:

HBX: Melanie Williamson  
Associate General Counsel  
DC Health Benefit Exchange Authority  
1225 I Street, N.W., 4th Floor  
Washington, DC 20005  
Phone: (202) 727-4063

CAB: Richard K. Rothschild  
General Counsel  
D.C. Contract Appeals Board  
441 4th Street N.W., Suite 350N  
Washington, DC 20001  
Phone: (202) 727-4109

Either party may unilaterally change the identity of the person to whom the notice is to be given, or the address for the notice, with ten (10) calendar days advance written notice to the other Party.

**DISTRICT OF COLUMBIA HEALTH BENEFIT EXCHANGE AUTHORITY**

BY:

  
\_\_\_\_\_  
Mia Kofman  
Mila

TITLE: Executive Director

DATE:

6/24/15

**DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD**

BY:

  
\_\_\_\_\_  
Marc D. Loud, Sr.

TITLE: Chief Administrative Judge

DATE:

6/23/15

**MEMORANDUM OF UNDERSTANDING AND AGREEMENT BETWEEN  
DEPARTMENT OF ENERGY AND ENVIRONMENT  
AND  
DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD**

Pursuant to the authority of § 1003(b) of the Procurement Practices Reform Act of 2010, effective April 8, 2011 ("PPRA," D.C. Law 18-371; D.C. Official Code § 2-360.03(b)), the Department of Energy and Environment ("DOEE") and the District of Columbia Contract Appeals Board ("CAB") agree that CAB shall serve as the hearing tribunal for DOEE's contracts with the Sustainable Energy Utility ("SEU") contractor and the Energy Efficiency Financing Act ("EEFA") administrator. This memorandum of understanding ("MOU") is made in accordance with the following terms and provisions:

1. CAB shall have jurisdiction to review and determine de novo appeals, protests, and DOEE claims consistent with § 1003(a) of the PPRA (D.C. Official Code § 2-360.03(a)) and arising out of DOEE's contracts with the SEU contractor (D.C. Official Code § 8-1774.01) or the EEFA administrator (D.C. Official Code § 8-1778.45). Proceedings before the CAB shall be governed by the Board's Rules of Procedure.

2. CAB shall provide (a) the necessary services of its judges, and (b) the necessary services of its staff and all appropriate resources pursuant to the terms of this agreement and consistent with the manner in which CAB provides such services in cases under the PPRA. DOEE is responsible for providing a court reporter for transcribing hearings as requested by CAB and per CAB rules. Periodic status conferences may be held telephonically and may not require a court reporter.

3. All services will be provided on a reimbursable basis, in accordance with the following terms:

a. DOEE will reimburse CAB for all direct costs calculated as follows: each panel judge's actual hours spent on the case (with a supporting brief entry of the work that is provided and hourly time billed to hour increments) multiplied by the sum of: (i) the judge's hourly salary rate, plus (ii) the applicable fringe benefits on the hourly salary rate as determined by the Office of Finance and Resource Management ("OFRM"), plus (iii) an overhead rate of 25 percent of the judge's hourly salary rate (this covers reimbursement for all CAB resources provided under Paragraph 2(b) above). In addition, the actual hours spent on the case by the CAB General Counsel ("GC") and Attorney-Advisor shall be reimbursable multiplied by the sum of the applicable hourly rate and fringe hourly rate.

b. Billing for reimbursement for services pursuant to this MOU will be effected on a quarterly basis and will be submitted to DOEE by CAB. An intra-District transfer will be arranged by OFRM from DOEE to CAB.

c. The cost elements of each assigned dispute from DOEE for which services are provided by CAB will be kept separate by CAB docket number.

d. The total cost for services under this MOU shall not exceed twenty thousand dollars (\$20,000) for Fiscal Year (FY) 2015.

e. CAB and DOEE may extend the term of this MOU by exercising a maximum of five (5) one (1) year option periods. The total term of this MOU, including the exercise of any option clause, may not exceed six (6) years. Option periods may consist of a year, a fraction thereof, or multiple successive fractions of a year, and shall expire at the end of the applicable fiscal year. Each one (1) year option period shall take effect automatically unless either Party notifies the other in writing of its intent not to renew the option at least thirty (30) calendar days prior to the expiration of the MOU. The option shall be for one (1) fiscal year and is subject to the availability of funds.

f. The exercise of an option period is subject to the availability of funds at the time of the exercise of the option.

g. This MOU shall take effect when fully executed, and shall continue in effect through September 30, 2015, unless extended by the exercise of an option period pursuant to section (e) above.

h. Section (g) notwithstanding, in the event of termination of this MOU, this MOU shall continue to apply to any protests and appeals being adjudicated by CAB pursuant to this agreement.

4. The points of contact responsible for administration of this MOU are:

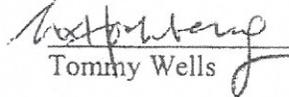
DOEE: Taresa Lawrence  
Deputy Director  
Department of Energy and Environment  
1200 First Street N.E., 5th floor  
Washington, DC 20002  
Phone: 202-671-3313  
Fax: 202- 535-2881

CAB: Mark D. Poindexter  
General Counsel  
D.C. Contract Appeals Board  
441 4th Street N.W., Suite 350N

Washington, DC 20001  
Phone: (202) 727-4109

**DEPARTMENT OF ENERGY AND ENVIRONMENT**

BY:

  
\_\_\_\_\_  
Tommy Wells

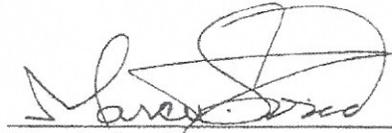
*for*

TITLE: Director

DATE:

**DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD**

BY:

  
\_\_\_\_\_  
Marc D. Loud, Sr.

TITLE: Chief Administrative Judge

DATE: August 19, 2015

**MEMORANDUM OF UNDERSTANDING AND AGREEMENT BETWEEN  
WASHINGTON CONVENTION AND SPORTS AUTHORITY  
AND  
DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD**

Pursuant to the authority of the D.C. Code § 2-309.03(b) (2001 ed.), the Washington Convention Center and Sports Authority ("Authority") and the District of Columbia Contract Appeals Board ("CAB") agree that the CAB shall serve as the hearing tribunal for the Authority. This memorandum of understanding ("MOU") is made in accordance with the following terms and provisions:

1. The CAB shall have jurisdiction to review and determine de novo appeals, protests, and Authority claims consistent with D.C. Code § 2-309.03(a). Proceedings before the CAB shall be governed by the Board's Rules of Procedure ("Rules") except to the extent that the rules are inconsistent with, or impose substantive requirements, that exceed those provided for under the Authority's statutes and regulations relating to procurements. The CAB acknowledges that the Authority is exempt from the District of Columbia Procurement Practices Act (D.C. Code §§ 2-301.1, *et seq.*; the "Act") including the Act's requirement that there be a determination supported by substantial evidence that a procurement is urgent and compelling in order to proceed with award or performance of a contract during the pendency of a bid protest (*see* D.C. Code § 2-309.08(c)(2)) and the requirement that any decision of the Authority to proceed with such an award or performance is subject to review by the CAB (*see* D.C. Code § 2-309.08(c)(3)).

2. The CAB shall provide (a) the necessary services of its judges, and (b) the necessary services of its staff, the creation of an electronic docket of each case, conference and hearing rooms (where needed), and incidental legal research services, electronic and non-electronic courtroom equipment, and supplies directly related to any services and facilities provided by the CAB pursuant to the terms of this agreement. The Authority is responsible for providing a court reporter for transcribing hearings (where needed). Periodic status conferences are generally held telephonically and do not require a court reporter.

3. All services will be provided on a reimbursable basis, in accordance with the following terms:

a. The Authority will reimburse the CAB for all direct costs calculated as follows: the assigned judge's actual hours spent on the case (with a supporting brief description of the work for each day that services are provided and hourly time billed to quarter hour increments) multiplied by the sum of: (i) the judge's hourly salary rate, plus (ii) the applicable fringe benefits on the hourly salary rate as determined by the Office of Finance and Resource Management ("OFRM"), plus (iii) an overhead rate of 25 percent of the judge's hourly salary rate (this covers reimbursement for all CAB resources provided under Paragraph 2(b) above).

b. Billing for reimbursement for services pursuant to this MOU will be effected on a quarterly basis and will be submitted to the Authority by OFRM on behalf of the CAB. The Authority will effectuate payment to CAB via wire transfer as instructed by OFRM.

c. The cost elements of each assigned dispute from the Authority for which services are provided by the CAB will be kept separate by CAB docket number.

4. The points of contact responsible for administration of this MOU are:

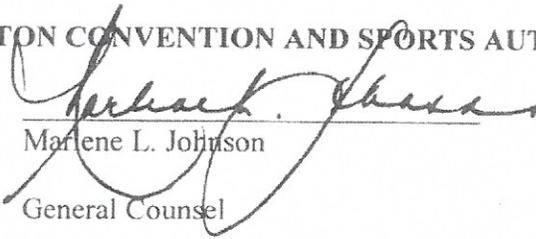
Authority: Marlene L. Johnson  
General Counsel  
Washington Convention and Sports Authority  
801 Mt. Vernon Place, N.W.  
Washington, D.C. 20001  
202-249-3219

CAB: Richard K. Rothschild  
General Counsel  
D.C. Contract Appeals Board  
717 14th Street, N.W.  
Washington, DC 20005  
(202) 727-4109

5. This MOU shall remain in effect until terminated by either party upon 60 days notice to the other party. In the event of termination, this MOU shall continue to apply to all ongoing proceedings covered by the MOU.

**WASHINGTON CONVENTION AND SPORTS AUTHORITY**

BY:

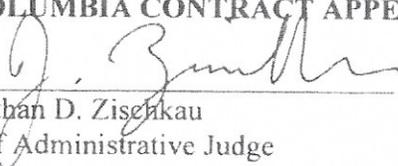
  
Marlene L. Johnson

TITLE: General Counsel

DATE: December 29, 2009

**DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD**

BY:

  
Jonathan D. Zisenkai  
Chief Administrative Judge

DATE:

1/5/2010



**DC CONTRACT APPEALS BOARD  
FY2020-2021 PERFORMANCE OVERSIGHT RESPONSES**

**ATTACHMENT 5  
DC CONTRACT APPEALS BOARD  
Virtual Hearings Protocol (Draft of February, 2021)**

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**DC Contract Appeals Board  
Remote Proceedings Protocol  
(Draft of February 2021)**

On March 11, 2020, the Mayor of the District of Columbia declared a State of Emergency and Public Health Emergency due to the COVID-19 pandemic. See Mayor's Order 2020-045 (March 11, 2020) and Mayor's Order 2020-046 (March 11, 2020). These emergency declarations currently have been extended to March 17, 2021 but may extend beyond that date. See Mayor's Order 2021-004 (January 11, 2021).

In light of the public health emergency and until further notice, the DC Contract Appeals Board ("CAB" or "the Board") shall conduct remote or "virtual" proceedings only in all matters currently pending and subsequently filed before the Board. Unless otherwise instructed by the Chief Judge or the Presiding Judge in any case, all status conferences shall be conducted remotely via the telephone; all pre-hearing conferences shall be conducted remotely via the Zoom video-sharing platform (<https://zoom.us/>); and all hearings shall be conducted remotely via Zoom. Instructions for participating in these remote proceedings before the Board are set forth herein.

The parties participating in these remote proceeding agree to waive any challenges to the finality or lawfulness of an award, decision, ruling, determination or any other disposition by the Board on the basis that the proceeding was not held in-person. The Board may, under extenuating circumstances, permit limited, in-person proceedings during the declared Public Health Emergency.

**Due to the pending public health emergency, please note that, until further notice, all CAB Staff will be working remotely. If you have any questions regarding the Board's remote proceedings protocol or other Board operations matters, please contact General Counsel Mark Poindexter, or Appeals Clerk Mia House at (202) 727-6597, between normal business hours (M-F 9am - 5pm, except Holidays).**

## Instructions for Participating in Remote Proceedings Before CAB

As a general matter, the parties<sup>1</sup> must familiarize themselves and their witnesses with the technological platform that will be used to conduct the proceeding. All participants should be able to communicate clearly during the proceedings and the participants should readily be able to access and view any exhibits used in the proceeding. Unless otherwise ordered, the proceedings before the Board addressed by this protocol include Status Conferences, Prehearing Conferences and Hearings.

**General Requirements:** Parties and their legal counsel shall, at all times during virtual proceedings before the Board, properly comport themselves in the same manner as if they were appearing before the Board in person. Parties and their legal counsel appearing via video conference as outlined below should wear appropriate business attire. The Presiding Board Judge, in his or her sole discretion, may suspend and continue any proceeding to enforce these requirements.

The video or audio recordation of Status Conferences, Prehearing Conferences and Hearings by any persons other than Board staff as directed by the Board is strictly prohibited. The Presiding Board Judge, in his or her sole discretion, may suspend and continue any proceeding to the extent there are any unresolvable technical interruptions or unauthorized access issues.

### A. Remote Status Conferences

The Board utilizes status conferences to address informally “housekeeping” matters related to pending cases. They may be requested by motion of a party or ordered *sua sponte* by the Board. Unless otherwise ordered, all status conferences shall be conducted remotely by conference call.

Notice: Status conferences will be scheduled by email and/or telephone notice to all parties of record. The notice will provide parties with the date, time and dial-in instructions for the status conference.

Unless otherwise provided, the Board’s City-Wide Messaging conference dial-in numbers are as follows:

- *Citywide messaging dial-in number: 1-866-702-3464*
- *Participant Code (to be used by the parties): 9533834*

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<sup>1</sup> For purposes of the Board’s Remote Proceedings Protocol, the terms “party” or “parties” shall include self-represented litigants as well as those represented by legal counsel before the Board.

## **B. Remote Prehearing Conferences**

Prehearing Conferences are formal proceedings held shortly prior to a hearing. They allow the Board and the parties to organize anticipated documentary and testimonial evidence expected to be introduced at the hearing. This results in a more efficient and effective hearings process. The Presiding Judge will manage the proceeding.

*Notice:* The Board will provide all parties notice of the Prehearing Conference through Scheduling Order. Unless otherwise ordered, Scheduling Orders will be issued to the parties via the Board's e-filing platform, File&ServeXpress (<https://secure.fileandservexpress.com>). A weblink to the Scheduling Order will be posted to the Board's website's public calendar entries for the case. (<https://cab.dc.gov/page/courtroom-calendar>).

At least seven (7) weekdays prior to the Prehearing Conference, the parties should submit by email to the Board's Clerk's Office ([mia.house@dc.gov](mailto:mia.house@dc.gov)) a list containing the email addresses and phone numbers of all parties seeking to participate in the Prehearing Conference. At least three (3) weekdays prior to the Prehearing Conference, the Board's Clerk's Office will email a Zoom invitation link (containing the Zoom meeting number and password) to those parties previously identified, permitting them access to fully participate in the Prehearing Conference. A Zoom link for the public to observe (see and hear, only) the Prehearing Conference will be included in the Board's calendar entry for the matter. Participants in, and public observers of, the Prehearing Conference should contact the Board at least two (2) business days prior to the conference should any special accommodations be required.

*Recordation:* A video and audio recording via Zoom of the Prehearing Conference will be maintained by the Board.

*Exhibit Preparation:* Please see Section C (Hearings) below for instructions on preparing Exhibits.

*Practice Session:* Prior to the Prehearing Conference, the Board will schedule a mandatory remote hearing practice session. This will allow parties to familiarize themselves with such Zoom features as sharing exhibits, examining witnesses and raising objections and other features to be used during the Prehearing Conference and subsequent trial.

## **C. Remote Hearings**

Hearings are formal, trial-type proceedings before the Board. Hearings allow the parties to present evidence (e.g., documents and witnesses) in support of their litigation position, as well as impeach the evidence offered by the opposing parties. The Board will ensure the hearing is conducted fairly, efficiently in accordance with applicable law.

*Notice:* The Board will provide all parties notice of the hearing through Scheduling Order. Unless otherwise ordered, Scheduling Orders will be issued to the parties via the Board's e-filing platform, File&ServeXpress (<https://secure.fileandservexpress.com>). A weblink to the

Scheduling Order will be posted to the Board's website's public calendar entries for the case. (<https://cab.dc.gov/page/courtroom-calendar>).

At least seven (7) weekdays prior to the hearing, the parties should submit by email to the Board's Clerk Office ([mia.house@dc.gov](mailto:mia.house@dc.gov)) a list containing the email addresses and phone numbers of all parties and witnesses seeking to participate in the hearing. At least three (3) weekdays prior to the hearing, the Board's Clerk's Office will email a Zoom invitation link (containing the Zoom meeting number and password) to those parties and witnesses previously identified, permitting them access to fully participate in the hearing. A Zoom link for the public to observe (see and hear, only) the hearing will be included in the Board's calendar entry for the matter. Participants in, and public observers of, the hearing should contact the Board at least two (2) business days prior to the hearing should any special accommodations be required.

Recordation: Unless otherwise ordered, a video and audio recording via Zoom of the hearing will be maintained by the Board. In addition, a certified court reporter familiar with the Zoom platform and retained by the District (not the Board) will monitor and prepare a transcription of the hearing.

Exhibits: Unless otherwise ordered, exhibits that will be referenced in the prehearing conference and hearing should be prepared as follows:

- (1) Unless otherwise ordered, all exhibits should be "bundled" for each party (i.e., prepared as one merged and searchable pdf, have a Table of Contents, be marked indicating the offering party and ordered sequentially, e.g. PX-1 for Protestor's Exhibit 1; AX-1 for Appellant's Exhibit 1; I(name)X-1 for Intervenor's Exhibit 1; and DX-1 for District's Exhibit 1) and filed with the Board at least three (3) business days prior to the prehearing conference. A copy of the exhibits should also be emailed to the Board's Clerk's Office ([mia.house@dc.gov](mailto:mia.house@dc.gov)) and will be utilized at the hearing as well.
- (2) Rebuttal exhibits should be marked at the time of submission (e.g. PRX-1, ARX-1, I(name)RX-1, DRX-1) and filed with the Board as marked within five (5) business days after the close of the hearing.
- (3) Parties should confer with opposing parties to determine what exhibits are stipulated and what evidentiary objections each side is maintaining and avoid duplicate exhibits.
- (4) The Board may provide Drop Box (<https://www.dropbox.com>) or other remote file storage link and instructions to the parties if, upon notification by the parties, the exhibit files are too large to be accepted by the Board's e-filing system. No emailing of the proposed exhibits to the Board's Clerk's Office is required if the Board utilizes remote file storage to receive the files.
- (5) Parties should practice using the screenshare function on Zoom and have exhibits readily accessible on their computers to screenshare as necessary and permitted by the Presiding Judge and Board Judge.
- (6) Parties should provide their witnesses with relevant exhibits prior to the hearing.

Witnesses: Unless otherwise ordered, parties should adhere to the following requirements regarding witnesses participating in remote hearings before the Board:

- (1) Witnesses should appear by the Zoom video-conferencing platform. Other platforms may not be supported.
- (2) If a witness does not have the capability for videoconferencing and can only call in on the phone, then the witness cannot testify regarding any exhibits. Please also see Item 16 regarding testimony by telephone.
- (3) A party calling the witness is responsible for ensuring the witness has a separate video and audio feed.
- (4) A party should not attempt to “share” a connection with a witness.
- (5) All witnesses should be prepared to present a valid form of identification to verify their identity to the Board over the video feed.
- (6) It is the responsibility of the party offering the witness to ensure that the witness has the link to the proceedings and that all exhibits are available to the witness, including those of opposing parties.
- (7) At no point during witness testimony shall parties communicate with the testifying witness without the permission of the presiding judge.
- (8) Witness shall not communicate with anyone during their testimony.
- (9) Rule of Sequestration: If the Board invokes the Rule of Sequestration is invoked (i.e., ensuring witnesses do not hear, and therefore possibly be influenced by, the testimony of other witnesses in the hearing), the witnesses will either be asked to login to Zoom when it is their turn to testify, or to sit in a Zoom “waiting room” while the hearing is proceeding.
- (10) All parties and witnesses shall affirm that they will act in accordance with the Board’s procedures. The witness affirmation shall include a statement that the witness is testifying under oath, based upon his or her own knowledge, and that the witness certifies that no one, other than authorized video conference participants, are present in the room in which they are testifying.
- (11) If a witness experiences technical difficulty during his or her testimony, the proceeding will be stopped to allow the party and the witness to resolve the issue.
- (12) Witnesses should wear proper attire for a courtroom and be in a distraction free environment. Witnesses shall turn off ringers and alerts that make noise and not engage in any other activities while testifying. Witnesses should mute their microphone when not being addressed.
- (13) The parties should ensure that the Zoom displays the witness’s proper name.

- (14) Witnesses should let the party or Board Judge finish speaking before answering questions. When an objection is made, witnesses should stop speaking and let the Board Judge rule on the objection.
- (15) Procedure for disconnection: Parties should advise the witness to attempt to re-enter the meeting if they are inadvertently disconnected and instruct the witness to contact the party by phone or email for further instructions if they are unable to rejoin the Zoom hearing.
- (16) Testimony by Telephone: In exceptional circumstances, the Board may, upon written or oral motion, permit a witness to participate in a hearing by telephone. This will depend on the reason, nature of the witness and subject of the witness's testimony, and whether a telephonic examination will not prejudice the presentation of any party. Parties may be required to hire a notary to administer the oath to the witness at the witness' location if the Board cannot actually observe the witness.

Post-Hearing Submissions: Please refer to the Board's Post-Hearing Order for post-hearing submissions requirements and deadlines.