

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CONTRACT APPEALS BOARD



MARC D. LOUD, SR.  
CHIEF ADMINISTRATIVE JUDGE

February 11, 2022

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 January 24, 2022, please find herein the DC Contract Appeals Board's responses to the Committee on Government Operations and Facilities' prehearing questions for the February 17, 2022, FY21 (and FY22 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



## GENERAL QUESTIONS

1. Please provide the agency's mission statement.

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

2. Please 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 21 and FY 22, 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)
EOM FOIA Report	February 1 (annually)	Yes
OCA Performance Accountability Report	January 15 (annually)	Yes
OCA Performance Plan	September 30 (annually)	Yes
DCHSEMA COOP Plan	October 1 (annually)	Yes
DSLBD CBE/SBE Spending Review Reports	Quarterly	Yes
EEO Officer/Counselor Availability Reports	Quarterly	Yes
OCP Account Review Team (ART) Reports (PCard)	Monthly (21 <sup>st</sup> )	Yes
OCP Key Performance Measures/Workload Update	October 15 (annually)	Yes
BEGA Public and Confidential Financial Disclosure Reports	May 15 (annually)	Yes

4. Please list and describe any regulations promulgated by the agency in FY 21 and FY 22, to date, and the status of each.

**Response:** The Board promulgated no regulations in FY21 and FY22 to date.

5. Please explain any significant impacts on your agency, if any, of any legislation passed at the federal or local level during FY 21 and FY 22, 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 22.

**Response:** The Board's top five priorities are listed below. The Board believes that if we focus on these priorities and adapt promptly to changing circumstances, our mission will be continuously fulfilled.

**1. Sustain the Board's 100% Compliance Rate 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 FY21, the Board closed 100% of protests within the 60-business day timeline. In FY22 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.

**2. Sustain the Board's 100% Compliance Rate for Closing Appeals Cases No Later Than Three Years after the Initial Filing Date.**

The Board will continue to prioritize pre-emptive measures and strong case management to close all Appeals cases within three years of the initial filing date. At present, the Board exceeds this metric because all Appeals cases on the docket are two-years old or less. The Board does not have any backlogged cases and has not had any for nearly six years. Case backlogs undermine public confidence in the District's contract dispute resolution process. Case backlogs also impair access to justice, as they increase the risk that key witnesses and/or documentary evidence may be unavailable at trial.

**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 long been recognized regionally as having one of "the most transparent database(s)" of any government agency.<sup>1</sup> In this regard, the Board prioritizes the upload to the public website of all case materials filed in cases within three business days of filing (except materials filed under protective order). Uploads are accomplished through the Board's iManage Document Management System, which automates and simplifies the process. The Board also maintains an

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

online trial calendar and posts all upcoming trial and pretrial hearing dates on the public website (presently updated through August 2023). We discuss briefly below the two broad categories of case records uploaded to the Board’s public website.

*Upload 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 FY21, parties filed 1,574 pleadings, motions, contract documents and other materials with the Board totaling 36,447 pages. For FY21 and FY22 to date, all filed materials (except materials filed under protective order) were timely uploaded to the public website. The table below includes total documents and pages filed with the Board and uploaded to the public website (except as noted) in FY21. The table also compares FY21 filings/uploads to those from the previous four-year period (FY17-FY20).

	FY21	FY20	FY19	FY18	FY17
Documents Filed	1,574	2,043	1,376	1,461	1,933
Pages Filed	36,447	64,595	27,735	26,275	41,742

*Upload of Legacy Case Files on CAB’s Website.* The second category of records to be uploaded to the Board website are legacy files in closed cases filed between 1953-1985. As to such, the Board digitized 850,000 paper records in FY20-21. In FY22, the Board is slated to digitize its final 577,000 pages of paper records. (The Office of Contracts and Procurement issued a contract to a SBE vendor for digitization of these latter records on February 1, 2022, with a projected completion date of September 2022.) Contingent upon the availability of funding, the Board intends to upload the aggregate 1,447,000 digitized records to the public website in FY23.

#### **4. Develop a Board Five-Year IT Strategic Plan and Provide an Efficient, Safe and Secure Day to Day Technology Environment for the Board and its Stakeholders.**

The Board prioritizes the completion of a Five-Year IT Strategic Plan to provide on-going assessment of the existing technology environment, and to position the Board to update technologies as advancements are made in the broader fields of document, court, and adjudication management. The plan must envision collaborative work with OCTO to deploy appropriate security tools on a continuous basis (e.g. Multi-Factor Authentication, Cyber Security Training, Crowdstrike Anti-Malware, etc.) and provide long-term assessments for continued access to the Board’s unique adjudicatory assets (File & ServeXpress, iManage Document Management System, iManage File Site Server, etc.). The Board’s IT Director is finalizing the IT Plan with a projected completion date of March 2022. The IT Director (and IT Specialist) also continue to address day to day technology issues on the Board’s behalf.

#### **5. Provide Maximum Possible Efficiency in Services to All CAB Stakeholders During Potential Impacts Necessitated by COVID-19 (or other Circumstances).**

Given that the ultimate course of COVID19 may be uncertain, the Board is prepared to operate fully onsite, fully digital, or in a hybrid environment that combines digital with onsite operations. In this regard, the Board will remain nimble enough to transition operations seamlessly in accordance with circumstances. With or without a public emergency, the Board has developed policies for remote work which ensure that all CAB employees are provisioned with the necessary remote work tools, that all litigants may conduct proceedings digitally (e.g., File & ServeXpress, Webex), that CAB staff are available onsite and remotely during business hours, and that hearings



will be conducted in-person (or virtually) as appropriate. In addition, Board leadership continues to monitor retention policies, staff capacity, staff performance and relationship-building so that continued excellence, collaboration and mission-fulfillment are achieved at the Board.

(The Board notes that whether we have been onsite, digital or hybrid, the performance of our team has been exemplary (see table below)).

DC Contract Appeals Board	FY21	FY20	FY19	FY18
Cases Closed	22	36	36	56
New Cases Filed	34	24	35	46
Total Pages Filed/Uploaded to Website	36,447	64,595	27,735	26,275
Percentage of Protests Closed in 60 Business Days	100%	94%	100%	91%
Percentage of Appeals Closed w/ 4 Mos. of Readiness for Decision	100%	93%	79%	84%

7. What metrics are currently 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 21 performance plan, if one was prepared. Please explain which performance plan objectives were completed in FY 21. If they were not completed, please provide an explanation.

**Response:** Please see Attachment 1. With the exceptions noted below, the Board completed all applicable performance plan objectives in FY21. Thus, the Board achieved its performance plan objectives of having 100% of its protest cases decided within 60 business days of filing; having 100% of its appeals cases three-years old or less; having 100% of its appeal cases decided within four months of being ready for decision; and electronically archiving 100% of Board cases closed in FY21. The Board achieved 91% compliance with its goal of having all cases initiated by parties through electronic filing in FY21 (three of 34 cases were initiated by regular mail and/or hand-delivery). The Board did not achieve its compliance target of having 50% of its cases resolved through settlement, but it came very close with a 41% compliance rate. No Board cases currently pending with DC courts were decided in FY21, hence that performance objective is not applicable in this reporting period. (The Board is pleased to note, however, that on November 18, 2021 (FY22) the D.C. Court of Appeals affirmed the Board's decision in Fort Myer Construction

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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.

Corporation (D-1454). *See District of Columbia v. District of Columbia Contract Appeals Board*, 263 A.3d 480 (D.C. 2021).

9. Please provide a copy of your agency's FY 22 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 21 and FY 22, to date, to improve the operations of the agency. Please describe any funding utilized for these initiatives or programs and the results, or expected results, of each initiative.

**Response:** The Board did not implement any new initiatives or programs in FY21 or FY22 to date.

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.

**Response:** Please see Attachment 3. The Board currently has no vacancies.

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

**Response:** Not applicable.

13. 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 indicate if any position must be filled to comply with federal or local law.

**Response:** Please see table below as provided via the D.C. Department of Human Resources PeopleSoft application. While the Schedule A reflects the dates of hire with the District of Columbia government, the Board notes that Attorney Advisor Portia Roundtree and IT Specialist Joseph Santos joined CAB on December 8, 2019 and December 5, 2021, respectively.

Contracts Appeals Board as February 3, 2022													
	Title	Name	Posn Nbr	Hire Date	Vac Stat	Grade	Step	Salary	Fringe 20.5%	Prgm Code	Activity	Reg/ Temp/ Term	Funding Source
1	ADMIN JUDGE	Parchment, Monica C	00003040	5/2/2011	F	17	0	\$ 193,878.31	\$39,745.05	2001	2001	Term	Local
2	CHIEF ADMIN JUDGE	Loud, Marc D.	00006341	8/3/2010	F	18	0	\$ 196,589.70	\$40,300.89	1090	1010	Term	Local
3	General Counsel	Poindexter, Mark D	00011739	7/27/2015	F	15	6	\$ 169,885.00	\$34,826.43	2001	2001	Reg	Local
4	ADMIN JUDGE	Majett, Nicholas A	00013299	10/7/2019	F	17	0	\$ 193,878.30	\$39,745.05	2001	2001	Term	Local
5	STAFF ASSISTANT	House, Mia J	00018016	9/1/1988	F	11	10	\$ 80,900.00	\$16,584.50	2001	2001	Reg	Local
6	Supervisory IT Specialist	Daniel, Beulah	00050893	4/13/2020	F	14	0	\$ 151,980.00	\$31,155.90	2001	2001	Reg	Local
7	Clerk of Court	Tuttle, Thane Forrest	00077391	1/28/2013	F	9	0	\$ 136,652.12	\$28,013.68	2001	2001	Reg	Local
8	Program Support Assistant	Berry, Uday	00077392	9/22/2014	F	8	7	\$ 56,400.00	\$11,562.00	2001	2001	Reg	Local
9	Attorney Advisor	Edwards, Jason	00085519	8/12/2015	F	14	6	\$ 144,431.00	\$29,608.36	2001	2001	Reg	Local
10	Attorney Advisor	Roundtree, Portia Marie	00087310	4/7/2014	F	14	4	\$ 136,177.00	\$27,916.29	2001	2001	Reg	Local
11	Information Technology Special	Santos, Joseph M	00094107	4/1/2019	F	11	3	\$ 66,785.00	\$13,690.93	2001	2001	Reg	Local

14. 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.

15. 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 21 and FY 22, to date;

**Response:** Please see table below.

CAB Staff Member	Position	Justification
Marc 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
Mia House	Appeals Clerk-ATC	Critical Contact
Manuel Ortiz (through August 2021)	IT Specialist	Critical Contact
Mark Poindexter	General Counsel	Critical Contact
Portia Roundtree	Attorney Advisor	Critical Contact
Joseph Santos (as of December 2021)	IT Specialist	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 21 and FY 22, to date;

**Response:** Not applicable.

c. A list of travel expenses, arranged by employee for FY 21 and FY 22, to date, including justification for travel;

**Response:** Not applicable.

d. A list of total workers' compensation payments paid in FY 21 and FY 22, to date, including the number of employees who received workers' compensation payments, in what amounts, and for what reasons.

**Response:** Not applicable.

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

**Response:** In FY21, the Board spent a total of \$5,825.84 for mobile communications and devices, including equipment and service plans. In FY22, the Board has spent \$1,300.16 for these services.

17. Please list in descending order the top 25 overtime earners in your agency in FY 21 and FY 22, 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.

18. For FY 21 and FY 22, 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.

19. 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.

20. For FY 21 and FY 22, to date, please list all intra-District transfers to or from the agency.

**Response:** Not applicable.

21. For FY 21 and FY 22, to date, please identify any special purpose revenue funds maintained by, used by, or available for use by the agency. For each fund identified, provide:

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

**Response:** Not applicable.

22. For FY 21 and FY 22, 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. Unless otherwise noted, 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	11/11/2020	\$400.00	Professional Development
2	07/08/2021	\$2,418.85	Construction Services
3	07/20/2021	\$319.23	Professional Development
4	08/10/2021	\$44.55	Cable
5	08/27/2021	\$350.40	Moving Services
6	09/08/2021	\$44.55	Cable
7	09/20/2021	\$594.00	IT Equipment
8	09/21/2021	\$44.55	Cable
9	09/21/2021	\$2,499.00	Computer and Video Equipment
10	09/22/2021	\$3,222.94	Office Products and Supplies
11*	10/08/2021	\$649.00	Office Products and Supplies
12	10/26/2021	\$382.50	Professional Development
13	11/01/2021	\$476.43	Office Products and Supplies
14	11/09/2021	\$400.00	IT Office Support
15	11/09/2021	\$44.55	Cable
16	11/10/2021	\$168.66	IT Office Support
17	11/30/2021	\$275.00	Office Products and Supplies
18	12/07/2021	\$44.55	Cable
19	01/11/2022	\$44.55	Cable
	<b>Total FY21-FY22 (through 1-31-2022) PCard Expenditures</b>	<b>\$12,423.31</b>	

\*Transaction made by cardholder Mark Poindexter as authorized by the Board during Mr. Berry's absence.

23. Please list and provide a copy of all memoranda of understanding ("MOU") entered into by your agency during FY 21 and FY 22, 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 FY21 with the Washington Convention and Sports Authority (WCSA) (entered into on January 5, 2010); the District of Columbia Health Benefit Exchange Authority (HBX) (entered into on April 22, 2021); and the District Department of Energy and Environment (DOEE) (entered into on August 5, 2021). In FY22, the WCSA MOU is continuing. The HBX MOU terminated September 30, 2021. A one-year renewal for FY22 was executed by the Board September 28, 2021, and is awaiting finalization by HBX. The DOEE MOU terminated September 30, 2021, and a one-year renewal for FY22 is pending. 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.

24. 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.

25. 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 21 and the first quarter of FY 22. Please detail any over- or under-spending and if the agency had any federal funds that lapsed.

**Response:** Please see tables below.

FY 2021 EXPENDITURES								
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	\$ 230,199	\$ (5,085)
ADJUDICATION	ADJUDICATION	100	2001	2001	\$ 1,554,682	\$ 1,583,452	\$ 1,552,383	\$ 31,068
<b>TOTAL</b>					<b>\$ 1,779,796</b>	<b>\$ 1,808,566</b>	<b>\$ 1,782,582</b>	<b>\$ 25,984</b>
FY 2022 EXPENDITURES as of 12/31/2021								
Program Title	Activity Title	Appropriated Fund	Program	Activity	FY 2022 Approved Budget	FY 2022 Revised Budget	FY 2022 Expenditures	Variance
PERSONNEL	PERFORMANCE MANAGEMENT	100	1010	1090	\$ 226,656	\$ 226,656	\$ 57,319	\$ 169,338
ADJUDICATION	ADJUDICATION	100	2001	2001	\$ 1,670,520	\$ 1,670,520	\$ 378,825	\$ 1,291,695
<b>TOTAL</b>					<b>\$ 1,897,176</b>	<b>\$ 1,897,176</b>	<b>\$ 436,143</b>	<b>\$ 1,461,033</b>

26. Please provide a list of all budget enhancement requests (including capital improvement needs) made for FY 22 or FY 23. For each, include a description of the need and the amount of funding requested.

**Response:** Please see table below for the Board's FY23 budget enhancement requests. The Board submitted no budget enhancement requests in FY22.

## FY 2023 Agency Budget Submission

Agency Code	AF0
Agency Name	Contract Appeals Board
Agency Point of Contact	Marc D. Loud Sr
Agency POC Email	marc.loud@dc.gov
Agency POC Phone	202-727-6597

**AGENCIES:** Please complete this form to provide a summary view of all enhancement requests submitted by your agency, as well as offsetting reductions for any requests to expand existing high-performing programs or to launch completely new programs or initiatives. Remember to complete a separate Form 2 (Detail) for each enhancement request. **Sort the table below by the agency's priority ranking of enhancements. Insert additional lines as necessary.** For recurring enhancements and/or reductions, please note out-year costs. If in doubt, use a multiplier of 1.75%.

## ENHANCEMENT REQUESTS

			Total	PS	NPS	# of				
	<u>Enhancement Type</u>	<u>Summary Description</u>	FY23 amount	FY23 amount	FY23 amount	FTEs	FY24	FY25	FY26	Agency
Enhancement Title	As indicated on Form 2	In the first sentence, describe the enhancement. In the second, describe the likely impact	requested	requested	requested	requested				Priority
Legacy Case Files Website Upload	A. Restore previous budget reduction/one-time funding	This enhancement will allow the Board to contract with a vendor to upload over 1,000,000 pages of Board case files to the public website. These legacy case records date back as early as the Board's founding in 1951 up to circa 1985. Board records from 1985 to the present are already on the website.	\$45,000	\$0	\$45,000	0.0	\$5,160	\$0	\$0	1 of 4
iManage Case Management Cloud Migration	E. Completely new program/activity	This enhancement will secure a vendor to migrate the Board's on-premises iManage Case Document System to the vendor's cloud. The iManage system populates all case files from the File & ServeXpress platform to the Board server and to the public website for transparency/public viewing.	\$75,000	\$0	\$75,000	0.0	\$40,000	\$40,000	\$40,000	2 of 4
Adobe etc. License Renewals/Acquisition	B. Increased cost to main existing program/activity	This enhancement will permit CAB to replace 12 expiring Adobe licenses critical to Board review of pdf pleadings and upload of case filings to the public website. Additionally, CAB administrative staff will acquire new licenses for Seamless Docs and Survey Monkey to improve efficiencies.	\$10,500	\$0	\$10,500	0.0	10,500.0	10,500	10,500	3 of 4
OCTO Additional FY23 Services	C. Operational improvement with strong business case	This enhancement will upgrade OCTO's current service offerings to CAB from Remedy Force to Tier 3, will pay for increases to licenses, and support Service Now support.	\$6,944	\$0	\$6,944	0.0	6,944.0	6944	6944	4 of 4
			\$0							
			\$0							
			\$137,444	\$0	\$137,444	0.0	\$62,604	\$57,444	\$57,444	

**Response:** Please see table below.

**Including anticipated reprogrammings for remainder of FY2022**

[illegible]

**Including anticipated reprogrammings for remainder of FY2022**

[illegible]

**Response:** Not applicable.

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

**Response:** Not applicable.

30. Please list each contract, procurement, and lease entered into or extended by your agency during FY 21 and FY 22, 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	Contracting Party	Service	Amount	Term	Competitively Bid	Contract Monitor/Activity Results	Funding Source
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
FY21 (6-9-2021)	PO643917	Avid Systems	Telework Laptops	\$3,840.60	FY21	OCP procurement – PO awarded to DCSS/SBE vendor	Mark Poindexter, CAB General Counsel/N/A	Local
FY21 (7-6-2021)	PO644878	Thompson Reuters/Westlaw	Annual Legal Research Software Subscription	\$8,820.05	FY21	OCP procurement – PO awarded to proprietary software vendor	Mark Poindexter, CAB General Counsel/N/A	Local
FY21 (9-17-2021)	PO648891 (vendor does not accept	Younts Consulting	Software Technical Support	\$350	FY21	OCP procurement – PO awarded to	Mark Poindexter, CAB General Counsel/N/A	Local



FY(Issue Date)	Purchase Order	Contracting Party	Service	Amount	Term	Competitively Bid	Contract Monitor/Activity Results	Funding Source
	PCard payments)					proprietary software vendor		
FY21 (9-21-2021)	PO649025 (vendor does not accept PCard payments)	Younts Consulting	Software License	\$312.99	FY21	OCP procurement – PO awarded to proprietary software vendor	Mark Poindexter, CAB General Counsel/N/A	Local
FY22 (10-26-2021)	PO653027	Total Office Products	Annual Copier Maintenance Agreement	\$2,955.84	FY22	OCP procurement – PO awarded to DCSS/SBE vendor	Mark Poindexter, CAB General Counsel/N/A	Local
FY22 (11-15-2021)	PO654543 (vendor does not accept PCard payments)	Younts Consulting	Annual iManage Software Agreement	\$817.91	FY22	OCP procurement – PO awarded to proprietary software vendor	Mark Poindexter, CAB General Counsel/N/A	Local
FY22 (11-22-2021)	PO655218	Walton & Green Consultants	Temp Support Services (IDIQ)	\$6,500 (\$3,056.35 spent through 1-31-2022)	FY22	OCP procurement – PO awarded to DCSS/SBE vendor	Mark Poindexter, CAB General Counsel/N/A	Local
FY22 (12-3-2021)	PO655063 (vendor does not accept PCard payments)	Younts Consulting	Software Technical Support	\$300	FY22	OCP procurement – PO awarded to proprietary software vendor	Mark Poindexter, CAB General Counsel/N/A	Local
FY22 (2-1-2022)	PO659274	DigiDoc/Document Managers	Document Scanning and Archival Support	\$68,083.04	FY22	OCP procurement – PO awarded to DCSS/SBE vendor after competitive bid	Mark Poindexter, CAB General Counsel/N/A	Local

31. 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 FY21, the Board achieved a 161% SBE spending goal completion rate on its adjusted approved SBE spending goal of \$12,093.69 (\$19,475.19 spent). The Board's FY22 adjusted expendable budget is \$100,843.03, with an adjusted approved SBE spending goal of \$50,421.52. In FY22 to date, the Board has spent \$7,332.28 with SBEs/CBEs. In addition, as part of a recent award by OCP for scanning and archival services, \$68,083.04 is currently obligated for SBE use (please see the Board's response to Question 30).

32. 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.

33. Please list all settlements entered into by the agency or by the District on behalf of the agency in FY 21 and FY 22, 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.

34. Please list the administrative complaints or grievances that the agency received in FY 21 and FY 22, to date, broken down by source. Please describe any changes to agency policies or procedures that have resulted from complaints or grievances that were resolved in FY 21 and FY 22, to date.

**Response:** Not applicable.

35. Please list and describe any spending pressures the agency experienced in FY 21 and any anticipated spending pressures for the remainder of FY 22. Include a description of the pressure and the estimated amount. If the spending pressure was in FY 21, describe how it was resolved, and if the spending pressure is in FY 22, describe any proposed solutions.

**Response:** The Board did not experience any spending pressure in FY21 and is not projecting any spending pressure in FY22.

36. Please provide the number of FOIA requests for FY 21, and FY 22, 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 spent responding to these requests, and the cost of compliance.

**Response:** The Board processed no FOIA requests in FY21 or FY22 to date.

37. 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 has two primary databases: **File & ServeXpress** (CAB's Case Management System) and **iManage** (CAB's Case Document Storage Repository).

- **File & ServeXpress** serves as CAB's case management system. It is hosted by the vendor at the vendor's cloud data center location. File & ServeXpress permits the digital filing and legal service of all pleadings, Board issuances, contract records, case materials and other submissions filed in Board cases. File & ServeXpress also stores litigant contact information, case history, case assignment and other pertinent case data. Finally, File & ServeXpress is a relational database that permits management level queries upon request.
- All documents filed with File & ServeXpress are then uploaded into the Board's second primary database: the **iManage Case Document Management System**. The initial

upload includes both sealed and unsealed case records. All **unsealed** case records uploaded to the **iManage Case Document Management System** are then made available to the public through the case search feature on the Board's website: <https://cab.dc.gov/page/search-pending-and-closed-cases>. The iManage database is currently hosted on a server by OCTO. CAB has two licenses for iManage's front-end software (iManage Desksite) that permit authorized Board staff to perform the case file upload operations noted herein.

b. The age of the system and any substantial upgrades that were made in FY 21 and FY 22, to date, or that are planned for the system;

**Response:** File & ServeXpress was formed in 2012 through the acquisition of "Case FileXpress" and "File & Serve" (a former Lexis Nexis company). It is an industry leader that serves more than 1,300 courts and over 200,000 registered users. The organization has fully staffed Product Management and Information Technology Divisions that routinely upgrade existing, and bring new, features to market. Board staff receive regular notifications on maintenance and system upgrades directly from File & ServeXpress and are aware of no substantial upgrades to the system made in FY21 and FY22 to date.

The iManage Document Management System was acquired by the Board in 2009. The last major upgrade was 2016. The servers on which the system is hosted, however, are OCTO servers and were upgraded in December 2020. While there are no current deficiencies with the system, the Board is currently assessing upgrades as appropriate that include, but are not limited to, migration of the system to the cloud, the capacity to perform bulk uploads, and advanced reporting capabilities.

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

**Response:** The public is granted free access to all Board litigation records on the public website (except materials sealed by a protective order). The records available on the Board's website include, but are not limited to, all pleadings, contracts, Requests for Proposals, Invitations for Bids, Terminations for Default, Terminations for Convenience, Invoices, Contract Officer Final Decisions, Claims, Board Opinions, Board Orders, etc., filed in open and closed cases.

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

**Response:** See response above.

38. Please list and describe any ongoing investigations, audits, or reports on the agency or any employee of the agency that were completed during FY 21 and FY 22, to date.

**Response:** Not applicable.

39. Please provide a list of all studies, research papers, reports, and analyses that the agency prepared or funded during FY 21 and FY 22, to date. Please submit a hard copy to the Committee of any study, research paper, report, or analysis that is complete.

**Response:** Not applicable.

40. 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, and organizes joint training exercises, panel discussions, and case reviews for members. Individual Judges and Attorneys are also associated with the 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).

#### CONTRACT APPEALS BOARD

41. 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)*

\*Pending reappointment.

42. 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.

43. Please list the number of complaints filed by contractors with the Board in FY 21 and FY 22, to date.

**Response:** In FY21, 16 contract disputes were filed with the Board. In FY22 through February 1, 2022, two contract disputes have been filed.

44. Please list the number of cases that were open at the beginning of FY 21, at the beginning of FY 22, 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 10/1/20 (FY21)	Cases Open on 10/1/21 (FY22)	Cases Currently Pending (as of February 1, 2022) (average number of calendar days open)
Protest	2	5	2 (46.5)
Contractor Appeal	6	12	11 (233.7)
District Claim	0	0	0 (0)
Quick Payment Act Claim	0	1	1 (172)
Public-Private Partnership Act Claim	0	0	0 (0)
Appeal from Debarments and Suspensions	0	1	1 (193)

45. 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 21 and FY 22, 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	FY21 Cases Settled (average number of calendar days from filing to settlement)	FY22 Cases Settled through February 1, 2022 (average number of calendar days from filing to settlement)
Protest	6 (35.6)	1 (8)
Contractor Appeal	3 (318.3)	6 (378)
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)

46. Please list the number of cases closed, and the average number of days closed cases were open, in FY 21 and FY 22, to date, in each of the following categories:

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

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

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

d. Quick Payment Act claims;

e. Public-Private Partnership Act claims; and

f. Appeals from Debarments and Suspensions.

**Response:** Please see table below. Note also that 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	FY21 Cases Closed (average number of days from filing to resolution)	FY22 Cases Closed through February 1, 2022 (average number of days from filing to resolution)
Protest	15 (43.3 business days)	8 (45.4 business days)
Contractor Appeal	7 (247 calendar days)	6 (378 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)

47. How many cases were resolved through the accelerated disposition procedure described in D.C. Official Code § 2-360.04(c) in FY 21 and FY 22, to date?

**Response:** Not applicable.

48. How many cases were resolved through the small claims procedure described in D.C. Official Code § 2-360.04(d) in FY 21 and FY 22, to date?

**Response:** Not applicable.

49. How many appeals of Board decisions were made to another tribunal in FY 21 and FY 22, to date, by the Chief Procurement Officer? By other parties? In how many appeals of Board decisions in FY 21, and FY 22, to date, was the decision of the Board fully upheld? Overturned in part?

**Response:** No appeals of Board decisions were made to another tribunal in FY21. In FY22 through February 1, 2022, one appeal of a Board protest decision has been filed with the D.C. Superior Court by a non-District party. During the relevant period, one decision of the Board that had been appealed by the District was affirmed, 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
FY21	22	n/a	n/a	n/a	n/a
FY22 (through February 1, 2022)	14	1	n/a*	1	n/a*

\*A FY19 Board decision appealed by District was affirmed by the DC Court of Appeals on November 18, 2021. *See District of Columbia v. District of Columbia Contract Appeals Board*, 263 A.3d 480 (D.C. 2021).

50. In how many cases were the Board's decisions on questions of fact set aside on appeal in FY 21 and FY 22, to date?

**Response:** Not applicable.

51. In how many cases in FY 21 and FY 22, to date, did the Board report the neglect or refusal of a subpoena to a judge of the Superior Court of the District of Columbia?

**Response:** Not applicable.

52. In how many cases in FY 21 and FY 22, 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:** Three cases.

53. In how many cases in FY 21 and FY 22, to date, did the Board sustain a protest on the basis that an agency's determination of its minimum needs or of the best method of accommodating those minimum needs lacked a reasonable basis?

**Response:** Not applicable.

54. In how many cases in FY 21 and FY 22, 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:** Not applicable.

55. How many protests were dismissed by the Board in FY 21 and FY 22, to date, for being frivolous?

**Response:** Not applicable.

56. Which cases, if any, appealed to the District of Columbia Court of Appeals were decided in FY 21 and FY 22, to date? Who appealed CAB's decision in each case? What was the Court's decision in each case?

**Response:** On November 18, 2021, (FY22) the D.C. Court of Appeals fully affirmed the Board's decision in Fort Myer Construction Corporation (D-1454). *See District of Columbia v. District of Columbia Contract Appeals Board*, 263 A.3d 480 (D.C. 2021). The *Fort Myer* decision had been appealed by the District on March 20, 2019, (FY19).

57. 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 are sufficient to address the current workload and prevent creation of an appeals backlog.

58. CAB collaborated with Howard University School of Law to develop an alternative dispute resolution framework. However, CAB reported the initiative was paused due to COVID-19. Please provide an update on whether any progress has been made on this effort, either by the CAB alone, or through coordination with other District adjudicatory agencies.

**Response:** The Howard University School of Law intern provided preliminary research for this initiative before it was paused due to COVID-19. Further research was performed by CAB staff in 2021 and early 2022. This research identified several common ADR practices for various tribunals, including, but not limited to, the Office of Administrative Hearings and the (federal) Civilian Board of Contract Appeals. Many of the most common practices are already incorporated into CAB's ADR procedures, which are set forth in Board Rule 217, D.C. Mun. Regs. Tit. 27, §§ 217.1—217.3 (2020). Several such practices include the following:



1. Drafting ADR rules of procedure that provide the mediator with the flexibility needed to use whatever ADR or mediation style the mediator believes would be most effective for a given dispute (Board Rule 217.3);
2. Complete confidentiality of the ADR process, in order to promote open and frank discussion between parties—including rules that (1) mediators and staff cannot be called to testify about a mediation; and (2) neither party can refer to statements made during mediation during subsequent proceedings (Board Rule 217.2(b)); and
3. Clearly describing ADR rules and expectations to the parties; either through the tribunal's rules of procedure, an ADR agreement signed by all parties, or both (Board Rules 217.1-217.3).

In addition, staff research revealed that one ADR best practice is to provide tribunal Judges and staff with regular training (in both ADR and mediation certificate programs). The Board will follow-up in FY22 as appropriate to review ADR/mediation training options/costs.

59. Please update the Committee on the Board's progress with instituting virtual hearings since the last update received in February 2021.

**Response:** Since the Board's last update in February 2021, the Board modified its Virtual Hearings Protocol with updates in the summer of 2021 and fall of 2022. The updates included providing parties the option for "hybrid" hearings and switching from Zoom to Webex as the preferred hearing platform. The Board's Virtual Hearings Protocol is undergoing final policy review. See Attachment 5. In addition, the Board is slated to hear oral argument in a mock online bid protest in March 2022 that will provide further insight for our final policy formulation.

60. Please update the Committee on whether any further progress has been made since the agency's last performance oversight hearing on digitizing and archiving case files, including how much of the available funding for this project has been used in FY 22, to date.

**Response:** As part of the FY21 Performance and FY22 Budget Oversight hearing, the Board estimated that there were approximately 577,000 additional unprocessed pages in its possession that require scanning and archiving as part of Phase 2 of the scanning and archiving project. This Committee and the Mayor provided the Board with funding to complete the estimated costs related to Phase 2 as part of the District's final FY22 budget. On February 1, 2022, OCP awarded this project to a SBE vendor. An initial planning meeting was conducted on February 3, 2022, and a site visit planned for February 15, 2022. To date, no vendor invoices have been submitted against the Purchase Order for this project.

(During Phase 1 of the Board's Scanning/Archiving Initiative (FY20-21), the Board scanned 850,000 pages of case records through its contract vendor. The scanned records are contained on password secured flash drives in the Board's possession and have also been uploaded to the Board's internal network. In August-September 2021, the boxes containing the aforementioned scanned pages were arranged and indexed for eventual transport to DC Archives upon its reopening. In January 2022, the Board was notified that DC Archives has reopened for receipt of approved records. CAB is currently reviewing arrangements to determine the appropriate transfer process.)

61. Please share an update on the work of the Board's IT Director in FY 21 and FY 22, to date, including any action plan developed.

**Response:** In FY21, the IT Director focused on completing written assessments of CAB onsite and remote technology assets. Through this process, the IT Director inventoried each CAB technology asset, assessed its efficiency for day-to-day operations and security implications, and implemented measures for greater efficiencies/improved safety (e.g., implemented Multi-Factor Authentication, Crowdstrike Anti-Malware, upgraded Office 2010 (where applicable) to Office 2016, etc.). The IT Director also supported the Board's broad telework policy by developing a comprehensive section titled, "Remote Work IT Guidelines" (August 2021). In the midst of the above, the IT Director helped lead the search process to successfully fill the IT Specialist vacancy (the position was vacant from August 1, 2021, to November 2021 due to a resignation). In FY22, the IT Director completed preliminary policy proposals/budgets for the Board to upload Phase 1 and Phase 2 digitized records to the public website, and to migrate iManage to the cloud. The IT Director is slated to complete a comprehensive Five-Year IT plan by the second quarter FY22 and will continue to provide stability in the Board's day-to-day technology operations (from desktops, laptops, and printers to servers, databases, and backend systems).

62. Please identify whether any known risks exist related to the loss of vendor support for existing CAB software.

**Response:** The Board is unaware of any known risks at present.

63. Please provide a final version of the CAB Virtual Hearings Policies and Protocols Guide.

**Response:** Please see Attachment 5. Note that the guide remains open to amendment depending on additional internal and external feedback.

64. Please describe any updates made to the CAB website in the last fiscal year to improve the availability of information on resources and the CAB's jurisdiction.

**Response:** As recommended by the Committee as part of its FY22 Budget Report, the Board added a summary of the procedures for filing Quick Payment Act claims to the Jurisdictional page of our website in FY22. <https://cab.dc.gov/page/jurisdiction-board>. The previous year, the Board added to the Resource page of its website a link to the District of Columbia Bar's Pro Bono Center to assist self-represented litigants: <https://cab.dc.gov/page/resources-cab>.

65. Please provide the Committee with an update on the work of the Telework Taskforce, including any reports it has completed.

**Response:** Please see Attachment 6. Upon returning to the office in July 2021, the Board's Telework Task Force implemented an updated and expanded alternative work schedule policy to allow Board staff greater flexibility in light of the on-going pandemic. In the second and third quarters of FY22, the Board will pilot a revised alternative work schedule policy based on the needs of the District, the Board's operational needs, and an assessment of the efficacy of the prior alternative work expansion.

66. 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, the Council and this Committee for their leadership during the unprecedented public health emergency. The Board acknowledges the tremendous teamwork of the outstanding CAB team in furtherance of our mission.



**DC CONTRACT APPEALS BOARD  
FY2021-2022 PERFORMANCE OVERSIGHT RESPONSES**

**ATTACHMENT 1  
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.

<b>Summary of Services</b>	The Contract Appeals Board reviews and determines protests of District contract solicitations and/or awards, appeals by contractors of District contracting officer final decisions on contractor claims, claims by the District against a contractor, appeals by contractors of suspensions and/or debarments, and contractor appeals of interest payment claims under the Quick Payment Act. PERFORMANCE PLAN DIVISIONS: Adjudication; Contract Appeals Board (Agency Management Program).
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## 2021 Accomplishments

Accomplishment	Impact on Agency	Impact on Residents
<p>1. For the seventh year in a row, the Board excelled in closing cases timely and knowledgeably, continuing to inspire public confidence that all Board matters are administered expeditiously and with sound expertise. For protest cases, that means the Board issued final decisions within 60 business days for 100% of the cases filed and resolved in FY21. (See DC Code § 2-360.08(d)). For appeals cases, that means the Board issued final decisions within three years of case filing, or 4 months of the case being ready for decision (whichever is sooner), in 100% of the appeals cases on the Board's docket. At the close of FY21, the Board did not have any pending cases that were more than 2 years old, and no pending protest cases that were more than 60 business days old.</p>	<p>Promotes confidence in the fairness and efficiency of the District's government contracts adjudication and resolution processes.</p>	<p>Promotes confidence in the fairness and efficiency of the District's government contracts adjudication and resolution processes.</p>
<p>2. The Board digitized a record-breaking 850,000 pages of legacy case records for ultimate upload to the CAB website where the public can review government contracts adjudicatory filings at its convenience. The records digitized in FY21 cover hundreds of cases filed at CAB prior to 1985. (Most CAB cases filed after 1985 are already displayed on the Board's website.) The digitization of archival case records is a multi-year effort, and the remaining approximately 577,000 pages of archival case records are scheduled to be digitized in FY22. In FY23, the Board proposes to upload the final 1.4 million pages of archival case records to the website in searchable format.</p>	<p>The Board's on-going technology initiatives and accomplishments promote transparency and aid in streamlining the Board's adjudication and supporting operations, thereby improving access to justice for the District of Columbia and its contracting communities.</p>	<p>The Board's on-going technology initiatives and accomplishments promote transparency and aid in streamlining the Board's adjudication and supporting operations, thereby improving access to justice for the District of Columbia and its contracting communities.</p>
<p>3. The Board reopened its office at 441 4th Street, NW (One Judiciary Square) on July 17, 2021, with a full complement of staff (following 16 months of closure due to the Covid-19 pandemic). Since reopening, the Board has implemented a hybrid telework/compressed hours policy which affords all staff partial telework or compressed schedules, while guaranteeing that CAB's public-facing operations are staffed daily onsite during business hours (9am-5pm).</p>	<p>The Board's efforts in being among the first independent DC agencies to reopen with a full complement of staff reinforce the District's dedication and commitment to excellence in serving its residents in particular, and the public contracting community as a whole. In addition, the Board's prompt implementation of an updated alternative work schedule policy has assisted staff in meeting both their professional and personal needs during the Covid-19 pandemic.</p>	<p>The Board's efforts in being among the first independent DC agencies to reopen with a full complement of staff reinforce the District's dedication and commitment to excellence in serving its residents in particular, and the public contracting community as a whole. In addition, the Board's prompt implementation of an updated alternative work schedule policy has assisted staff in meeting both their professional and personal needs during the Covid-19 pandemic.</p>

## 2021 Key Performance Indicators

[illegible]



Measure	Frequency	FY 2019 Actual	FY 2020 Actual	FY 2021 Target	FY 2021 Quarter 1	FY 2021 Quarter 2	FY 2021 Quarter 3	FY 2021 Quarter 4	FY 2021 Actual	Was 2021 KPI Met?	Explanation For Unmet KPI
Percent of cases resolved through settlement	Annually	55.6%	50%	50%	Annual Measure	Annual Measure	Annual Measure	Annual Measure	40.91%	Unmet	No agency barrier. Settlement target is a function of the parties' litigation strategies in a particular case (i.e., settle the case or continue to litigate) rather than a Board-dictated litigation outcome.
3 - Create and maintain a highly efficient, transparent and responsive District government through the digital archiving and electronic filing of all Board cases permitting web-based retrieval and full-text searching by the parties with pending cases and the public. (2 Measures)											
Percent of new cases using electronic filing system	Annually	100%	83.3%	100%	Annual Measure	Annual Measure	Annual Measure	Annual Measure	91.18%	Nearly Met	No agency barrier. While most litigants before the Board utilize the FileandServeXpress electronic case management system, the Board permits litigants to file cases by mail or in-person so as to help ensure access to justice for all Board stakeholders.
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	Annually	100%	100%	100%	Annual Measure	Annual Measure	Annual Measure	Annual Measure	100%	Met	

## 2021 Workload Measures

Measure	FY 2019 Actual	FY 2020 Actual	FY 2021 Quarter 1	FY 2021 Quarter 2	FY 2021 Quarter 3	FY 2021 Quarter 4	FY 2021 Actual
1 - Reduce the number of open appeal cases that are three years or older through docket review and strategic resource allocation (2 Measures)							
Number of new cases filed	35	24	Annual Measure	Annual Measure	Annual Measure	Annual Measure	34
Number of cases resolved	36	36	Annual Measure	Annual Measure	Annual Measure	Annual Measure	22
2 - Increase use of ADR in resolving disputes before CAB through researching, developing and applying best practices in mediation and other alternative dispute resolution models (2 Measures)							
Number of Scheduling Orders issued encouraging settlement	35	24	Annual Measure	Annual Measure	Annual Measure	Annual Measure	34
Number of cases resolved through settlement/voluntary withdrawal	20	18	Annual Measure	Annual Measure	Annual Measure	Annual Measure	9
3 - Increase digital archiving and electronic filing of new cases to provide full-text searching and, therefore, greater transparency for litigants, the contracting community and the public (3 Measures)							
Number of archived protest and appeals cases digitized and uploaded to the public website	0	0	Annual Measure	Annual Measure	Annual Measure	Annual Measure	1
Number of new cases filed and processed electronically	35	21	Annual Measure	Annual Measure	Annual Measure	Annual Measure	31
Number of documents filed in new cases	1376	2043	Annual Measure	Annual Measure	Annual Measure	Annual Measure	1574

## 2021 Operations

Operations Title	Operations Description	Type of Operations
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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>		
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>		
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>		
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



**DC CONTRACT APPEALS BOARD  
FY2021-2022 PERFORMANCE OVERSIGHT RESPONSES**

**ATTACHMENT 2  
DC CONTRACT APPEALS BOARD  
FY22 Performance Plan**

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# Contract Appeals Board FY2022

Agency Contract Appeals Board

Agency Code AFO

Fiscal Year 2022

**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 (KPIs)

Measure	Directionality	FY 2019 Actual	FY 2020 Actual	FY 2021 Actual	FY 2022 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	100%	94.1%	100%	95%
Percent of decisions sustained on appeal	Up is Better	100%	No Applicable Incidents	No Applicable Incidents	100%
Percent of Appeals resolved within 4 months of the cases being ready for decision	Up is Better	81.3%	92.9%	100%	90%
Percent of pending Appeals that are three years old or less	Up is Better	100%	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	55.6%	50%	40.9%	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%	83.3%	91.2%	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 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>		
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>		
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>		
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 (WMs)

Measure	FY 2019 Actual	FY 2020 Actual	FY 2021 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	35	24	34
Number of cases resolved	36	36	22
<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 cases resolved through settlement/voluntary withdrawal	20	18	9
Number of Scheduling Orders issued encouraging settlement	35	24	34
<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 new cases filed and processed electronically	35	21	31
Number of documents filed in new cases	1376	2043	1574



Measure	FY 2019 Actual	FY 2020 Actual	FY 2021 Actual
Number of archived protest and appeals cases digitized and uploaded to the public website	0	0	1

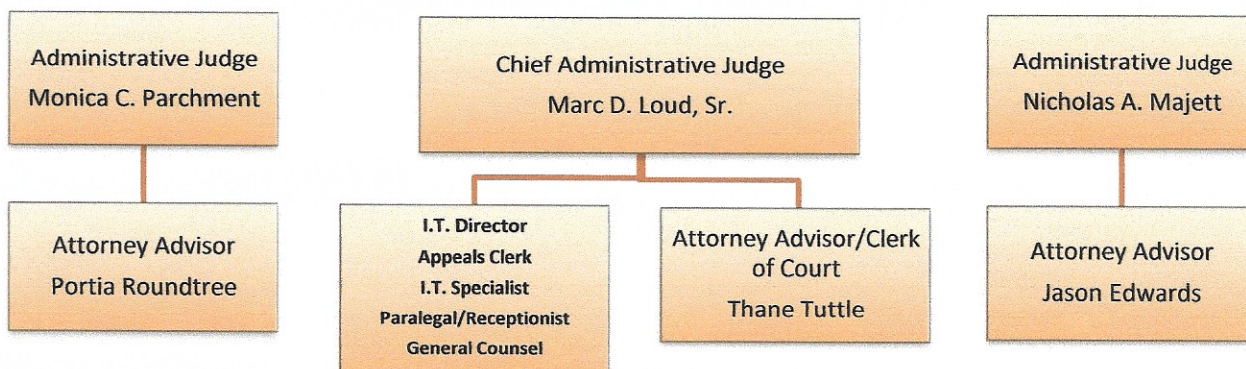
## Strategic Initiatives

Strategic Initiative Title	Strategic Initiative Description	Proposed Completion Date
<b>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 (1 Strategic Initiative)</b>		
FY22 Strategic Initiative: CAB Scanning and Archiving Initiative (Phase 2)	During Phase 1 of the Board's Scanning and Archiving Initiative (FY20-21), the Board scanned 850,000 pages of case records through its contract vendor. The scanned records are contained on password secured flash drives in the Board's possession and have also been uploaded to the Board's internal network. The Board is in the process of reviewing and preparing the scanned materials for upload to its public case search website and archiving in FY21-FY22. The Board estimates that there are approximately 577,500 additional unprocessed pages in its possession that will require scanning and archiving as part of Phase 2 of this project. The Board has received funding to complete Phase 2 in the District's final FY22 budget.	09-30-2022



**DC CONTRACT APPEALS BOARD  
FY2021-2022 PERFORMANCE OVERSIGHT RESPONSES**

**ATTACHMENT 3  
DC CONTRACT APPEALS BOARD  
ORGANIZATIONAL CHART  
(Effective February 1, 2022)**



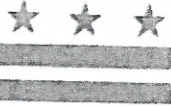


**DC CONTRACT APPEALS BOARD  
FY2021-2022 PERFORMANCE OVERSIGHT RESPONSES**

**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: Anthony Watkis	
Agency: District of Columbia Contract Appeals Board (CAB)		Dollar Amount: \$1,003.20	
Date Submitted: 10/26/2018		eMOU#: TO0AF0-2019-01134	
Project Description: Office 365 Enterprise License			
Risks: <ul style="list-style-type: none"><li>• None</li></ul>			
Challenges: <ul style="list-style-type: none"><li>• None</li></ul>			
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 Harrision	Required	CAH	10/26/2018
4. Interim CTO, Barney Krucoff	Required	BK	10/26/2018



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

---

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](mailto:mark.poindexter@dc.gov)

#### OCTO

Anthony Watkis

Program Manager

200 I ST SE, 5th Floor

Washington, D.C. 20003

Phone: 202-727-7498

Email: [Anthony.Watkis@dc.gov](mailto: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:

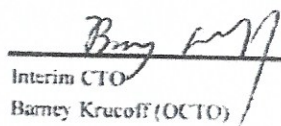
DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

  
\_\_\_\_\_

Marc Loud

Date: 10/25/18

DISTRICT OF COLUMBIA OFFICE OF THE CHIEF TECHNOLOGY OFFICER

  
\_\_\_\_\_  
Interim CTO  
Barney Krucoff (OCTO)

Date: 10/30/18

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

MOU Number: TO0AF0-2019-01134

Date of MOU: 10/23/2018

**Buyer Information**

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

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

Signature *Marc Land*

**Seller Information**

Agency OCTO  
Name:  
Name of Contact:  
Telephone #:

Agency TO0  
Code:  
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
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eMOU Approval History

10/23/2018 4:27:54  
PM

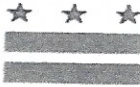
TO0AF0-2019-01134

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) (2011 Supp.).

**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.

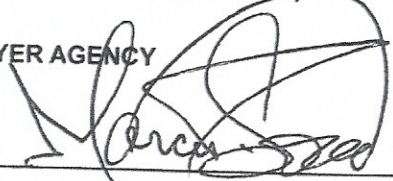
**XV. CONFIDENTIAL INFORMATION**

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.



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
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### Seller

AGY	YR	ORG	FUND	INDEX	PCA	OBJ	AOBJ	GRANT	PROJ	AG1	AG2	AG3	AMOUNT
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# eMOU Approval History

6/12/201 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(c)(5), 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 conditions:

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(a)(5) and § 2-351.01 *et seq.*), HBX has procurement authority independent of the District of Columbia Office of Contracting and Procurement, subject to only certain provisions of the PPRA. Consistent with this authority, the Executive Board of HBX has adopted Contracting and Procurement Policies and Procedures (available at <https://hbx.dc.gov/publication/dchbx-policies-and-procedures>) ("HBXCPP") to govern procurements of goods and services undertaken by HBX, including procedures for protests, contract claims, conflicts of interest, prohibited conduct and remedies.

2. CAB shall have jurisdiction to review and determine *de novo* appeals of final decisions by the HBX Executive Director, or designee, and HBX claims consistent with D.C. Code § 2-360.03(b). CAB acknowledges that HBX is largely exempt from the PPRA pursuant to D.C. Code § 2-351.05(c)(17) and § 31-3171.04(a)(5). The Parties agree that HBXCPP shall govern HBX-level proceedings and substantive issues on appeal and claims, as applicable, and that CAB proceedings shall be governed by CAB's Rules of Procedure.

3. CAB shall provide the necessary services of its judges and staff and all appropriate resources pursuant to the terms of this MOA, 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 or virtually and may not require a court reporter.

4. All services shall 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 CAB for necessary services exceeding \$25,000 per fiscal year. Payment shall be made in accordance with the following terms:

a. HBX shall 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 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 District of Columbia 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 made via Direct Voucher (exception 22 of the Financial Management and Control Order No. 07-004A) on invoiced amounts in accordance with the terms of this MOU. Payments shall be made to CAB within fifteen (15) days of the invoice date. The amount paid by DCHBX shall not exceed the amount approved by this MOU..

c. Payment will be made only upon presentation of properly invoiced amounts containing supporting entries indicating: (i) the work provided, (ii) the applicable hourly rate (inclusive of salary and fringe benefits), and (iii) corresponding hourly increments, in accordance with the terms of this MOA. Invoices shall separate by CAB docket number the cost elements of each assigned dispute from HBX for which services are provided by CAB.

5. CAB and HBX may extend the term of this MOA by exercising a maximum of five (5) one-year (1) option periods. The total term of this MOA, including the exercise of any option year, may not exceed six (6) years. The Parties agree that this MOA shall expire on September 30 annually, 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. When exercising an option period, the Parties may decrease the not-to-exceed amount for that option period without further amending or modifying the MOU, notwithstanding Section 7.

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 (2) 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 Parties' points of contact responsible for administration of this MOA are:

HBX: Pedro Briones  
Attorney Advisor  
D.C. Health Benefit Exchange Authority  
1225 "I" Street NW, 4th Floor  
Washington, DC 20005


Phone: (202) 741-8887

CAB: Mark D. Poindexter  
General Counsel  
D.C. Contract Appeals Board  
441 4th Street NW, Suite 350N  
Washington, DC 20001  
Phone: (202) 727-2841

Either party may unilaterally change the point of contact 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.

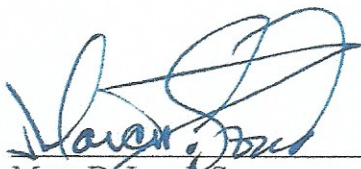
**DISTRICT OF COLUMBIA HEALTH BENEFIT EXCHANGE AUTHORITY**

BY:

 4-22-2021  
\_\_\_\_\_  
Mila Kofman Date  
Executive Director

**DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD**

BY:

 March 22, 2021  
\_\_\_\_\_  
Marc D. Loud, Sr. Date  
Chief Administrative Judge

**EXERCISE OF OPTION YEAR ONE  
MEMORANDUM OF AGREEMENT BETWEEN THE  
DISTRICT OF COLUMBIA HEALTH BENEFIT EXCHANGE AUTHORITY  
AND THE DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD**

Pursuant to paragraphs 5 and 6 of the Memorandum of Agreement (MOA) between the District of Columbia Health Benefit Exchange Authority and the District of Columbia Contract Appeals Board, executed April 22, 2021, the Parties hereby:

- Exercise Option Year One (1), lasting from October 1, 2021 until September 30, 2022; and
- Reduce the not-to-exceed amount of Option Year One to \$5,000.

All other terms and conditions of the MOA remain the same.

**DISTRICT OF COLUMBIA HEALTH BENEFIT EXCHANGE AUTHORITY**

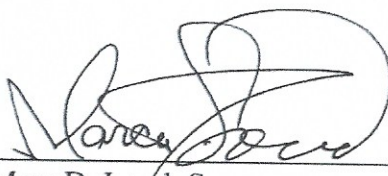
BY:

\_\_\_\_\_  
Mila Kofman  
Executive Director

\_\_\_\_\_  
Date

**DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD**

BY:

\_\_\_\_\_  
  
Marc D. Loud, Sr.  
Chief Administrative Judge

\_\_\_\_\_  
9/28/2021  
Date



**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**DEPARTMENT OF ENERGY AND THE ENVIRONMENT**  
**AND**  
**CONTRACTS APPEAL BOARD**

**HEARING TRIBUNAL FOR SEU AND PACE CONTRACTS – FY 2021**

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**I. INTRODUCTION**

This Memorandum of Understanding (“MOU”) is entered into by the Department of Energy and Environment (“DOEE”) and the Contract Appeals Board (“CAB”), referred to individually as a “Party” and collectively the “Parties.”



## **II. PROGRAM GOALS AND OBJECTIVES**

Pursuant to the authority of section 1003(b) of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-360.03(b)) ("PPRA"), DOEE and 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.

## **III. SCOPE OF SERVICES**

### **A. RESPONSIBILITIES OF CAB**

CAB shall:

1. Have jurisdiction to review and determine de novo appeals, protests, and DOEE claims consistent with section 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. 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 MOU and consistent with the manner in which CAB provides such services in cases under the PPRA.
3. Keep separate by CAB docket number the cost elements of each assigned dispute from DOEE for which services are provided by CAB.

### **B. RESPONSIBILITIES OF DOEE**

DOEE shall:

1. Make payment as specified in Section VI.B (Payment).
2. Provide 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.

**IV. DURATION OF MOU**

- A. This MOU shall be effective from the date of the last signature through September 30, 2021.
- B. The Parties may extend this MOU for up to four (4) fiscal years through one or more MOU amendments.
- C. The Parties intend for CAB to provide tribunal services through September 30, 2025.
- D. An extension is subject to the availability of funds at the time of the amendment.

**V. AUTHORITY FOR MOU**

- A. D.C. Official Code § 1-301.01(k).
- B. D.C. Official Code § 2-360.03(b).

**VI. FUNDING PROVISIONS**

**A. COST OF GOODS AND SERVICES**

- 1. The total cost of goods and services shall not exceed twenty thousand dollars (\$20,000).
- 2. Funding shall not exceed the actual cost of the goods and services. DOEE will reimburse CAB for actual costs incurred. "Actual costs" include:
  - a. All direct costs calculated as follows: each panel judge's actual hours spent on the case 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) CAB's actual overhead cost that covers reimbursement for all CAB resources provided under Section III.A 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; and
  - b. If the costs include funding for services through contracts or grants, "actual costs" may include fringe benefits, overhead, and profit paid pursuant to CAB's standard contracting or grant-making practices.
- 3. Funding shall be applied only to costs covered by this MOU.



**B. PAYMENT**

1. CAB shall submit monthly invoices to the DOEE Contact listed in Section XI.
2. CAB's itemized invoices for costs shall explain and document the amounts billed. For actual hours worked by CAB judges and staff, the invoice shall include a supporting brief entry of the work that was provided and hourly time billed to hour increments.
3. Within 30 calendar days after receiving proper invoices from CAB, DOEE shall make payments to CAB for goods and services provided, or respond in writing with a request for specificity or explanation for an unpaid amount. An intra-District transfer will be arranged by OFRM from DOEE to CAB.

**C. ANTI-DEFICIENCY**

The Parties acknowledge and agree that their respective obligations to fulfill financial obligations of any kind pursuant to any and all provisions of this MOU, are and shall remain subject to the provisions of the following laws, as amended: (1) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1351; (2) the District of Columbia Anti-Deficiency Act of 2002, D.C. Official Code §§ 47-355.01-.08; (3) D.C. Official Code § 47-105; and (4) D.C. Official Code § 1-204.46.

**VII. COMPLIANCE AND MONITORING**

Performance by the Parties is subject to scheduled and unscheduled monitoring reviews by the funder(s) or other authorized officials.

**VIII. RECORDS**

- A. The Parties shall maintain receipts and other records documenting the work performed and expenditures of all funds for at least three years from the expiration or termination of this MOU.
- B. A Party receiving funds shall make these receipts and records available for inspection by the funders or other authorized officials upon request.
- C. If a grant or contract is used to provide goods or services under this MOU, the funded Party shall arrange to make grantee or contractor receipts and records available to the funders or other authorized officials upon request.

**IX. CONFIDENTIAL INFORMATION**

The Parties will use, restrict, safeguard, and dispose of all information related to services provided pursuant to this MOU in accordance with all relevant federal and District of Columbia statutes, regulations, and policies.

**X. APPLICABLE LAW**

The Parties shall comply with all applicable statutes, rules, and regulations whether now in force or later enacted or promulgated.

**XI. CONTACTS**

The following individuals or their designees are the contact points for this MOU:

**FOR CAB:**

Mark D. Poindexter  
General Counsel  
D.C. Contract Appeals Board  
441 4th Street N.W., Suite 350N  
Washington, DC 20001  
Phone: (202) 727-6597  
Email: mark.poindexter@dc.gov

**FOR 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  
Email: taresa.lawrence@dc.gov

**XII. MODIFICATION**

This MOU, including any attachment to this MOU, except for a Party's written change in a contact under Section XI (Contacts), may be modified only through a written amendment signed by all Parties.

**XIII. TERMINATION**

- A. A Party may terminate this MOU in whole or in part by giving at least 30 calendar days written notice to the other Party.



- B. Except as provided for in Section XVI below, a Party providing goods or services that receives a notice of termination must immediately cease performance under this MOU, or, if that is not feasible, begin immediately to wind down performance.
- C. Except as provided for in Section XVI below, after receiving a notice of termination, a funded Party shall not be obligated to perform or provide further goods or services, other than winding down performance, supporting payment of invoices as specified in Section VI.B (Payment), complying with applicable laws, and honoring commitments to recordkeeping, reporting, monitoring, and confidentiality.

#### **XIV. DISPUTE RESOLUTION**

- A. The Parties will make every effort to resolve disputes concerning this MOU at the staff level.
- B. If the dispute cannot be resolved at the staff level, a Party may raise the dispute to the Director level.
- C. If the Directors are unable to resolve the dispute, a Party may refer the dispute to Office of the Chief Financial Officer for financial matters or to the Office of the City Administrator for other matters.

#### **XV. SIGNING AND COUNTERPARTS**

This MOU and any amendment may be signed by hand or electronically on the original version or a duplicate. It may be signed in counterparts, each separately and together constituting one and the same document.

#### **XVI. EXISTING PROTESTS, APPEALS, AND CLAIMS**

Section XIII notwithstanding, in the event of termination of this MOU, this MOU shall continue to apply to any protests, appeals, and claims being adjudicated by CAB at the time of termination pursuant to this MOU.

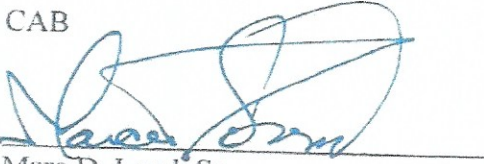
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**XVII. SIGNATURES**

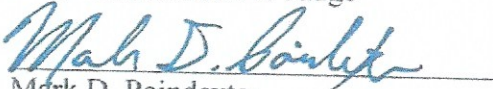
The Parties agree to this MOU.

CAB



Marc D. Loud, Sr.  
Chief Administrative Judge

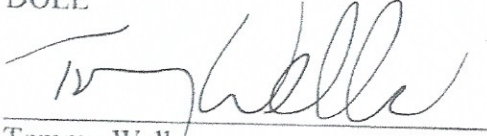
Date: March 23, 2021



Mark D. Poindexter  
General Counsel  
for legal sufficiency

Date: March 23, 2021

DOEE



Tommy Wells  
Director

Date: \_\_\_\_\_



Digitally signed by Beth Mullin  
Date: 2021.08.05 14:03:55 -04'00'

Beth Mullin  
Deputy General Counsel  
for legal sufficiency

Date: \_\_\_\_\_

**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. Zischkau  
Chief Administrative Judge

DATE: 1/5/2010





**DC CONTRACT APPEALS BOARD  
FY2021-2022 PERFORMANCE OVERSIGHT RESPONSES**

**ATTACHMENT 5  
DC CONTRACT APPEALS BOARD  
FY 22 Virtual Hearings Protocol (January 2022)**

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**DC Contract Appeals Board  
FY22 Remote Proceedings Protocol  
(January 2022)**

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). While the Public Health Emergency ended on July 25, 2021, the Mayor's authority to declare a Public Emergency currently, pending DC Council approval, extends until March 17, 2022. See Mayor's Order 2021-147 (December 20, 2021); B24-0572, Public Emergency Extension Emergency Amendment Act of 2021 (December 20, 2021).

In light of the ongoing public emergency, and until further notice, the DC Contract Appeals Board ("CAB" or "the Board") shall provide parties the option of conducting "fully-virtual" or "hybrid" proceedings 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 telephone/conference call; all pre-hearing conferences (whether fully-virtual or hybrid) shall be conducted remotely via the Webex™ by Cisco ("Webex") video-sharing platform ([www.webex.com](http://www.webex.com)); and all evidentiary hearings (whether fully-virtual or hybrid) shall be conducted remotely via Webex. 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 conducted in-person. The Board may, as appropriate, permit in-person proceedings during a declared Public Health Emergency or Public Emergency.

*DC Contract Appeals Board  
FY22 Remote Proceedings Protocol  
(January 2022)*



## **Instructions for Participating in Remote (Telephonic, Fully-Virtual and Hybrid) 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 Evidentiary Hearings.

**General Requirements:** Parties and witnesses shall, at all times during remote proceedings before the Board, properly comport themselves in the same manner as if they were appearing before the Board in person. Parties and witnesses 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 general requirements.

The video or audio recordation of status conferences, prehearing conferences and evidentiary hearings by any persons other than Board staff as directed by the Board is **strictly prohibited**. The Presiding Board Judge, in his or sole discretion, may suspend and continue any proceeding to the extent there are any unresolvable technical interruptions or unauthorized access issues.

### **A. Telephone Status Conferences**

The Board utilizes status conferences to address informally “housekeeping” matters related to pending cases. Status conferences 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 telephone conference call.

**Notice:** Status conferences will be scheduled by Board Order, 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 (Fully-Virtual or Hybrid)**

Prehearing conferences are formal proceedings held shortly prior to an evidentiary hearing. They allow the Board and the parties to organize anticipated documentary and testimonial evidence expected to be introduced at the evidentiary hearing as well as resolve any other pending issues prior to the hearing. This results in a more efficient and effective evidentiary hearing process. The Presiding Judge will manage the prehearing conference.

**Notice:** The Board will provide all parties notice of the prehearing conference through a 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>).

Unless otherwise ordered, at least seven (7) business days 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) business days prior to the prehearing conference, the Board's Clerk's Office will email a Webex invitation link (containing the Webex meeting number) to those parties previously identified, permitting them access to fully participate in the prehearing conference. A Webex 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.

Note that for fully-virtual prehearing conferences, the Board, parties, party-counsel, witnesses and court reporter shall appear remotely via Webex. For hybrid prehearing conferences, the Board may be present physically in its main courtroom at 441 4<sup>th</sup> Street NW, Suite 350-N, Washington, DC 20001; however, the parties, party-counsel, witnesses and court reporter shall appear remotely unless otherwise ordered by the Board.

**Recordation:** A video and audio recording via Webex of the prehearing conference will be maintained by the Board. Any other video or audio recording of the prehearing conference made without prior permission from the Board is strictly prohibited.

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

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

### **C. Remote Evidentiary Hearings (Fully-Virtual and Hybrid)**

Evidentiary hearings are formal, administrative trial-type proceedings before the Board. Evidentiary 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 evidentiary hearing is conducted fairly and efficiently in accordance with applicable law.

**Notice:** The Board will provide all parties notice of the evidentiary 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>).

Unless otherwise ordered, at least seven (7) business days prior to the evidentiary 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 evidentiary hearing. At least three (3) business days prior to the hearing, the Board's Clerk's Office will email a Webex invitation link (containing the Webex meeting number) to those parties and witnesses previously identified, permitting them access to fully participate in the evidentiary hearing. A Webex link for the public to observe (see and hear, only) the evidentiary hearing will be included in the Board's calendar entry for the matter. Participants in, and public observers of, the evidentiary hearing should contact the Board at least two (2) business days prior to the evidentiary hearing should any special accommodations be required.

Note that for fully-virtual evidentiary hearings, the Board, parties, party-counsel, witnesses and court reporter shall appear remotely via Webex. For hybrid evidentiary hearings, the Board may be present physically in its main courtroom at 441 4<sup>th</sup> Street NW, Suite 350-N, Washington, DC 20001; however, the parties, party-counsel, witnesses and court reporter shall appear remotely unless otherwise ordered by the Board.

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

**Exhibits:** Unless otherwise ordered, exhibits that will be referenced in the prehearing conference and evidentiary 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 or evidentiary hearing. A copy of the exhibits should be filed via the File&ServeExpress platform as well as emailed to the Board’s Clerk’s Office ([mia.house@dc.gov](mailto:mia.house@dc.gov)) for utilization during the proceeding.

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 Webex 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 evidentiary hearing.

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

- (1) Witnesses should appear by the Webex video-conferencing platform. Other platforms may not be supported.

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- (2) If a witness does not have the capability for videoconferencing and can only call in on the phone, then, unless otherwise ordered by the Presiding Judge, the witness cannot testify regarding any exhibits. Please also see Item 16 regarding witness 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 Board Judge.
- (8) Witnesses shall not communicate with anyone during their testimony.
- (9) Rule of Sequestration: If, upon motion by a party or *sua sponte*, the Presiding Judge invokes the Rule of Sequestration (i.e., ensuring witnesses do not hear, and therefore possibly be influenced by, the testimony of other witnesses in the evidentiary hearing), the witnesses will either be asked to login to Webex when it is their turn to testify, or to sit in a Webex “waiting room” while the evidentiary 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 Webex 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.

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- (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 Webex hearing.
- (16) Testimony by Telephone: In exceptional circumstances, the Board may, upon written or oral motion, permit a witness to participate in an evidentiary 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. Please also see Item 2.

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



**DC CONTRACT APPEALS BOARD  
FY2021-2022 PERFORMANCE OVERSIGHT RESPONSES**

**ATTACHMENT 6  
DC CONTRACT APPEALS BOARD  
Telework Policy  
(July 2021)**

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**The DC Contract Appeals Board  
Telework and Alternative Work Schedule Policy for All CAB Employees  
(July 22, 2021)**

**Statutory Authority:** Title XII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2- 139; D.C. Official Code §§ 1-612.01, *et seq.* and Chapter 12 of the District of Columbia Personnel Manual (DPM).

**Purpose:** During the DC Contract Appeals Board's (CAB or Board) agency-wide remote work occasioned by the unprecedented COVID-19 public health emergency, the Board experienced superior outcomes in every major category of Key Performance Indicator (KPI).<sup>1</sup> In addition, the general public and Board stakeholders were able to access CAB administrative staff live by telephone during business hours at all times, and in fact the Board had a record low 3% of public calls that were not answered live by CAB staff during the pandemic.<sup>2</sup> Further, the Board's collegial work culture was sustained during agency-wide remote work, with routine Zoom, Webex, and offsite gatherings providing consistent opportunities for relationship-building, team collaboration and staff meetings.<sup>3</sup> All CAB Board and team-members were enthusiastic participants in the many virtual and in-person gatherings, which strengthened the inter-personal relationships necessary for team building and collective success.

The Board has found, therefore, that continued promotion of work-life balance for all CAB Board and team-members will, under appropriate circumstances, have positive impacts on

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<sup>1</sup> In pertinent part, the CAB FY2020 KPIs and Workload Metrics report shows that the Board closed 94% of protest cases within the statutorily required 60 business days, ended the year with 100% of its appeals docket less than three years-old, decided 93% of all appeals cases within four-months of the ready-for-decision date, and resolved 50% of all cases through settlement. In each of the above categories, Board performance was comparable to or exceeded FY2019 performance data.

<sup>2</sup> For FY2019, the percentage of public calls that were not answered live by CAB staff during business hours was 6%. Thus, FY2020 performance exceeded FY2019 significantly. Data for these numbers is provided by OCTO-DC Net.

<sup>3</sup> For FY2020, the CAB team met monthly by Zoom or Webex for wellness check-ins, staff meetings, and task-force work (e.g. the Board's Return to Work Team). In addition, the CAB Senior Team held monthly wellness and strategy meetings.



the Board's continuing excellent performance and work culture. As a result, the Board is updating its May 8, 2013, "**Alternative Work Schedule Policy for All Employees**". Under the May 8, 2013, policy, Board Judges were allowed to work remotely and Board staff were allowed non-telework, alternative work schedules. Under the new hybrid telework policy as more fully outlined herein, all eligible CAB employees can now request telework, flex schedules, compressed schedules or alternative work schedules from supervisors. Neither Judges nor team-members, however, can apply for both telework and compressed schedules.

Further, to ensure that Board operations will not be disrupted by the new hybrid work policy, the Board will schedule at least one Judge, one Attorney, one IT professional and one administrative support professional onsite each day on a rotating basis. All Board trials and hearings will be conducted onsite, however, and alternative schedule privileges will be suspended during same. The new policy will take effect on Monday August 2, 2021, on a six-month pilot basis and will be re-evaluated by the Board in February 2022. Although the updated CAB policy contours to Board circumstances, the new policy is compliant with all District laws, policies, and issuances pertaining to alternative schedules.

#### **Four Principal Types of D.C. Government Sanctioned Work Schedules:**

- **Telework (DPM §1211):** Telework is an arrangement in which an employee routinely, during a declared emergency (if directed to do so), or in situational cases as defined in DPM §1211, performs officially assigned duties at an **Approved Alternative Worksite (AAW)**. The approval must be written and signed by the employee's direct supervisor. The telework arrangement must also specify the telework workday hours. There is no requirement that agencies offer a telework. If an agency offers telework, however, it must do so on an equal basis to all agency employees who are in substantially similar positions, UNLESS the employee's supervisor determines, in his or her sole discretion, that telework for an employee function is not conducive to the efficiency of agency operations and/or organizational needs.
- **Flexible Schedule (DPM §1209):** A Flexible Schedule allows employees

to work 80 hours in 10 workdays, but to vary the duty hours. With a flexible schedule, an employee must work eight hours per day, five days per week. However, a flexible schedule allows an employee to choose, within certain limitations, shift start and end times. Flexible schedules require prior approval by the employee's supervisor. There is no requirement that agencies offer flexible schedules. If an agency offers flexible schedules, however, it must do so on an equal basis to all agency employees who are in substantially similar positions, UNLESS the employee's supervisor determines, in his or her sole discretion, that a flexible schedule for an employee function is not conducive to the efficiency of agency operations and/or organizational needs. In addition, the District generally does not allow flexible schedules to begin prior to 6 am, nor to end after 6 pm (please also see the "Alternative Work Schedule" category below).

- **Compressed Schedule (DPM §1210):** A Compressed Schedule allows an employee to complete a biweekly pay period of 80 hours by working fewer than 10 days. For example, with the approval of the employee's supervisor, an employee can work eight, 10-hour days (for a total of 80 hours) and then be off two days per pay period) OR an employee can work eight, 9-hour days and one, 8-hour day (for a total of 80 hours) and then be off one day per pay period. Under this option, an employee may not work more than 10 hours for any workday. The tour of duty for each employee under a compressed schedule shall be defined by a fixed schedule established by the agency. There is no requirement that agencies offer compressed schedules. If an agency offers compressed schedules, however, it must do so on an equal basis to all agency employees who are in substantially similar positions, UNLESS the employee's supervisor determines, in his or her sole discretion, that a compressed schedule for an employee function is not conducive to the efficiency of agency operations and/or organizational needs.
- **Alternative Work Schedule (DPM §1208):** An Alternative Work Schedule is inclusive of flexible work schedule AND a compressed work



schedule. It is similar to a flexible schedule except that (1) employees are not limited to specified start/end times each day, and (2) employees can work more than 8 hours per day.<sup>4</sup> There is no requirement that agencies offer alternative work schedules. If an agency offers alternative work schedules, however, it must do so on an equal basis to all agency employees who are in substantially similar positions, UNLESS the employee's supervisor determines, in his or her sole discretion, that an alternative schedule for an employee function is not conducive to the efficiency of agency operations and/or organizational needs. The CAB policy, in a departure from the District's policy, will permit a wider variety of start and end times than is allowable under the District's flex schedule. See generally DPM §1208.8 (providing independent agencies like CAB may develop their own alternative work schedule policy).

**CAB Policy:** Under the CAB policy, all qualified employees will be offered work options that meet the needs of CAB and are compliant with District laws. The CAB policy is being implemented on a pilot basis beginning August 2, 2021 and will be evaluated in six months (February 2022) to determine whether it will be continued as a year-round program. This evaluation will include but not be limited to, the factors listed by DCHR's Telecommuting General Information Guide, "Good Performance Management Practices for Managers Facilitating Telework Agreements" and any other relevant DCHR issuances. During the pilot period (August 2021-February 2022), the following telework and alternative work schedules are available to CAB employees:

**Judges:** CAB Judges may request a telework, flex, compressed or limited alternative work schedule.

**CAB Team:** Non-judicial CAB team members may request a telework, flex, compressed or limited alternative work schedule.

**Everyone:** Per District policy, no CAB employee can request both telework and a

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<sup>4</sup> The basic requirements for establishing an alternative work schedule are as follows: (a) the basic forty (40)-hour workweek may be scheduled on fewer than five (5) days; (b) the working hours in each day of the basic workweek need not be the same; and (c) the basic non-overtime workday may exceed eight (8) hours. DPM § 1208.7.



compressed schedule.<sup>5</sup> Further, all telework and other alternative work schedule days must be approved and scheduled in advance of the pay period. Neither the District nor CAB recognizes unscheduled telework and/or alternative work schedule days.

**Approval Process:** Approval Process: All CAB employees must complete either the Telecommute Agreement or Non-Telecommute AWS Agreement posted on the CAB network and submit it to their immediate supervisor for approval. The forms can be completed and either signed digitally or downloaded and signed manually. (Telecommute Agreements should be signed twice by employees; once upon submission to the immediate supervisor, and a second time after telecommute training is completed. See below. All telecommute agreements must include an individual employee accountability plan signed by the employee and supervisor.)

The approval review process will consider (1) the type of work performed by the employee, (2) whether the employee's most recent performance rating meets AWS requirements, (3) the demonstrated ability to work independently, (4) the pattern and practice of completing assignments timely, and (5) other matters as determined by the supervisor.

Employees approved for telecommuting must then complete the DCHR sponsored telecommute training program: *Telecommuting (Online)*, Course Number 002W. After successful completion of the training program, the employee must sign, complete and date the Telecommute Agreement. A telecommute period is for the term specified in the agreement. Training is not a prerequisite to commencing non-telecommute alternative work schedules. The latter options may begin after supervisor approval.

**Approved Alternative Worksite:** For purposes of this policy, an Approved Alternative Worksite (AAW) is a supervisor-approved worksite conducive to accomplishing the employee's duties that is other than an employee's "official duty station". The official duty station for CAB employees is 441 4<sup>th</sup> Street, NW, Suite 350N, Washington, D.C. 20001.

**Comparison to District-Wide Policies:** The District allows a maximum of 4 days per pay

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<sup>5</sup> See DCHR Issuance I-2021-22, "Compressed, Flexible and Telework Schedules" (July 8, 2021).

period for the telework option. Under the CAB telework and alternative work schedule policy, supervisors determine the allowable number of telework/alternative work schedule days per pay period based on the needs of the Board.

**Hybrid Options:** CAB supervisors cannot approve employee requests for both telework and compressed work schedules. However, CAB supervisors may approve employee requests for telework and flexible scheduling.<sup>6</sup> On a case by case basis, a CAB employee may request a different hybrid option which will only be implemented if approved by the CAB employee's immediate supervisor AND the Chief Administrative Judge.

**Rescission/Suspension/Termination:** All telework and alternative work schedules are subject to elimination or suspension at any time by the CAB employee's supervisor. Rescission or suspension will result in the CAB employee being returned to a standard work schedule immediately. Failure to return to the standard work schedule after rescission/suspension will result in AWOL status. A telework and alternative work schedule agreement may be terminated for any reason within the discretion of the supervisor. Examples of for cause terminations include failure to complete assignments timely, and/or failure to be accessible by email or telephone. No particular formality is required to rescind, suspend or terminate. The termination must be in writing and can be by email or other written notice.

**Expenses Associated with Approved Alternative Worksite:** CAB will not incur any expenses to equip a CAB employee's AAW with necessary equipment to perform duties of the position. Unless otherwise provided in this section and approved by the CAB employee's supervisor, CAB printers, copiers, scanners, fax machines, etc. may not be removed from the CAB office to equip an AAW. Necessary office supplies may be provided (pencils, pens, paper clips, staples, etc.). In order to safeguard the District's IT infrastructure, CAB will provide employees secured access to CAB networks (via VPN) and, budget permitting, the use of District government-owned laptops. CAB will not reimburse employees for long distance telephone calls placed from an AAW. CAB employees must plan for long distance calls on in-office days. CAB will not reimburse

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<sup>6</sup> See generally DCHR Issuance I-2021-22, "Compressed, Flexible and Telework Schedules" (July 8, 2021).



employees for internet connections, DSL, use of personal computer equipment, and/or other related charges. CAB will not reimburse employees for utility costs, including heating, air conditioning, lighting, and the operation of government furnished data processing equipment.

**Compliance with DC Ethics Code/Prohibition on Outside Employment:** During a telework day as any other day, CAB employees are required to be in compliance with the DC Ethics Code (see generally DPM Chapter 18, and, specifically, DPM §1807.1(b) (prohibition on using government time or resources for other than official business, or government approved or sponsored activities)). In keeping with these ethics requirements, outside employment (i.e., the engagement in any line of business or the performance at any type work or service for any person, firm or corporation, other than that required by one's official position at CAB) is not permitted on government time, including telework and alternative work schedules.

**Child/Adult Care During Telework:** Telework is not intended to serve as a substitute for child or adult care. Per DCHR policy, if children or adults in need of primary care are in the AAW during a CAB employee's work hours, the CAB employee shall not provide child or adult care during the employee's tour of duty.<sup>7</sup>

**Accessibility:** A CAB employee must be accessible during a telework day. CAB employees on telework are required to respond to all emails and phone calls on a timely basis. Employee must also be able to respond to any work-related voice mails or electronic mails by close of business or within 24 hours from receipt of the same. CAB employees on telework may also be required by their supervisor to report to the office in-person within two (2) hours following a request to attend an emergency mandatory meeting.

**Docket/Staff Meetings:** Except in cases of scheduled leave or unscheduled emergency leave, CAB employees utilizing telework or other alternative work schedules must attend all required staff and/or docket accountability meetings in person. Telephone attendance is not generally allowable under this policy.

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<sup>7</sup> DCHR Telecommuting General Information Guide, pgs. 6-7 (January 2008, Rev. 1-26-2012).



**Telework Certification:** The CAB employee and her or his supervisor must personally certify each pay period the telework time worked. These certifications are the same as the normal PeopleSoft time sheet submission and approval requirements.

**Liability/Indemnification Related to Telework:** CAB is not responsible for damages to an employee's personal or real property, except to the extent found liable by a court of law. In the event of an injury, an employee must notify the Telework & Alternative Schedule Program Coordinator (TAPC) immediately. The TAPC will notify the Chief Administrative Judge immediately. The District's Workers' Compensation Law for injuries occurring in the course of actual performance of official duties applies equally to an AAW. By participating in telework under this policy, CAB employees agree to indemnify and hold harmless the District government, its employees, agents and officers from any and all liability for personal injury or any claim for compensation whatsoever arising from telework from an AAW, except for any CAB employee's injury(ies) covered by the District of Columbia Workers' Compensation Law. This indemnification provision shall be null and void in the event the CAB employee is not approved for telework. If the CAB employee's telework application is approved, but subsequently rescinded, suspended or terminated, the indemnity provision shall no longer be in effect after the last day on which CAB employee was allowed to telework.

**Approved Alternative Worksite Home Inspection/Safety:** A CAB employee approved for telework must provide reasonable assurance to her or his supervisor that the AAW meets acceptable standards of safety and security. In addition, AAWs must be free from undue distractions and interruptions, and provide the necessary level of security and protection for agency property.

**Partial Telework Not Allowed:** CAB employees are not allowed to telework for part of a day (i.e., less than eight (8) hours).

**Telework/Alternative Work Schedules Suspended During Board Trials:** To ensure the Board's staffing and other operational needs are met, Telework and alternative work schedules will not be permitted on days the Board is in trial.

**Performance Rating:** All CAB employees seeking telework, flex, compressed, and



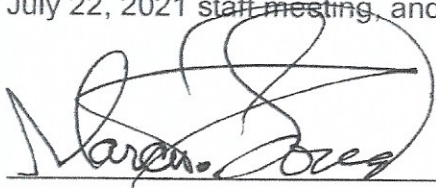
alternative work schedules must have received either a "Meets Expectation" or "Satisfactory" rating on their most recent performance evaluation as applicable. Performance standards for off-site employees are the same as for on-site employees and shall affect annual performance evaluations.

**Telework & Alternative Work Schedule Program Coordinator (TAPC):** An employee selected by the Chief Administrative Judge to serve as the CAB program administrator. The TAPC will provide all necessary forms and evaluation materials to employees; maintain copies in CAB files of all telework (optional schedule) records, including but not limited to, the signed telework application and agreement, the supervisor's denial of a telework application, and terminations of telework agreements. The TAPC, in coordination with CAB's internal HR liaison, will also maintain an updated electronic list of all CAB telework/Alternative Work Schedule participants, trainings completed, etc. as well as coordinate with DCHR Payroll as necessary. The TAPC must also complete DCSF No. 12-03 (Telework Status Report) at the end of the period specified in the Telework Agreement. The TAPC will also work with the Chief Administrative Judge to organize telework/alternative work schedules in such manner as minimizes disruptions to CAB operations.

**Data Security:** In addition to the initial telework training provided by DCHR via PeopleSoft, all CAB employees participating in telework shall complete an annual training in data security awareness protocols and, by September 30<sup>th</sup> of each year, provide a copy of the certificate of completion to her or his supervisor as well as the ASPC. Unless otherwise specified, the training shall be conducted inhouse by the CAB IT Director or her or his designee. CAB employees on telework are responsible for making sure that data security training is completed each fiscal year. District of Columbia government owned resources may only be used for CAB work-related business. The CAB employee is responsible for ensuring that all items are properly used in accordance with District policy. The CAB employee agrees to take reasonable steps to protect District government property from theft, damage, or misuse. This includes maintaining data security and record confidentiality to at least the same standard as when working at the regular CAB worksite. If a data or security breach occurs, and CAB records have been compromised, the CAB employee shall immediately report the issue to their supervisor, IT Director and Chief Administrative Judge as applicable. CAB employees agree to work with CAB IT staff

to secure their personal computer using VPN, and/or other technologies. CAB employees shall comply with all licensing agreements for the installation and use of District-owned software, including software installation on multiple computers. CAB employees shall not copy District government-owned software in any manner unless such copying is expressly permitted by the applicable licensing agreement. When a CAB employee uses personal equipment, software and data, the employee is responsible for maintenance and repair of these items unless other arrangements have been made in advance and in writing with the CAB employee's supervisor. CAB assumes no responsibility for any damage to, wear to, or loss of the employee's personal property. CAB employees agree to return in good working order and in timely fashion all District government-owned items used at the AAW or if the telework agreement is discontinued for any reason.

**APPROVED July 22, 2021** (This policy was discussed and distributed to staff at CAB's July 22, 2021 staff meeting, and subsequently by email)

A handwritten signature in black ink, appearing to read "Marc D. Loud, Sr.", is written over a horizontal line.

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