



**CONTRACT APPEALS BOARD**  
**FY 2022 PERFORMANCE AND ACCOUNTABILITY REPORT**  
**JANUARY 15, 2023**

# CONTENTS

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<b>Contents</b>	<b>2</b>
<b>1 Contract Appeals Board</b>	<b>3</b>
<b>2 2022 Accomplishments</b>	<b>4</b>
<b>3 2022 Objectives</b>	<b>6</b>
<b>4 2022 Operations</b>	<b>7</b>
<b>5 2022 Strategic Initiatives</b>	<b>8</b>
<b>6 2022 Key Performance Indicators and Workload Measures</b>	<b>9</b>

# **1 CONTRACT APPEALS BOARD**

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*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.

*Services:* 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.

## 2 2022 ACCOMPLISHMENTS

Accomplishment	Impact on Agency	Impact on Residents
<p>In FY22, the Board digitized its final 339,000 pages of legacy case records for ultimate upload to the CAB website. The digitization of CAB archival case records has been a multi-year effort, with the successful digitization of 850,000 pages of legacy records in FY21. The Board has now completed the digitization task and has accumulated approximately 1.2 million pages of archival case records in searchable format. The digitized records cover hundreds of CAB cases filed prior to 1985. In FY23, the Board will complete this multi-year effort, with the upload of the 1.2 million pages to its website. Completion of this objective will increase overall transparency by permitting the public to review the full extent of available CAB litigation records and contract case files online (except materials covered by protective order).</p>	<p>Increases and promotes overall transparency by permitting the public to review the full extent of available CAB litigation records and contract case files online (except materials covered by protective order).</p>	<p>Increases and promotes overall transparency by permitting the public to review the full extent of available CAB litigation records and contract case files online (except materials covered by protective order).</p>
<p>For the 8th year in a row, the Board has closed the fiscal year with no backlogged cases on its docket. As a result, CAB closed FY22 with no case on its “appeals” docket that is more than two-years old, and no case on its “protest” docket that is more than one-month old. In FY22, 100% of the appeals cases closed by CAB were closed within three-years of the initial filing date. In addition, 88% of the protest cases closed by CAB in FY22 were closed within 60 business days of the initial filing date, and the remaining 12% of protests were closed within several days of the 60 business-day deadline. In addition, 85% of all Board appeals cases closed in FY22 were either settled or voluntarily withdrawn.</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>

(continued)

Accomplishment	Impact on Agency	Impact on Residents
<p>In FY22, the Board earned the distinction of having three of its cases affirmed on appeal by the DC Courts. DC Courts also did not reverse ANY CAB case on appeal. This provides independent corroboration of the skill and expertise with which Board Judges decide cases and issue written decisions. The three Board cases were:</p> <ul style="list-style-type: none"><li>• D.C. v. D.C. Contract Appeals Board, 263 A.3d 480 (2022) a District contractor in a fixed-price procurement was entitled to an equitable adjustment for increased option-year labor costs where the Department of Labor issued updated wage rates, and the District's contract modification for the option years contained language stating that the contractor "may" be entitled to an equitable adjustment).</li><li>• Black Creek Integrated Systems Corp v. District Department of Corrections (D.C. Court of Appeals No. 19-AA-757)(issued August 8, 2022) (where the plain language of a District contract gives the Contracting Officer sole authority to "approve contract changes" and also provides that "any change at the instruction or request of any person other than the CO will be considered to have been made without authority", the agency's Deputy Director has no actual authority to extend the contract term without the CO's direct involvement).</li><li>• BSRI LP d/b/a Benefit Recovery v. D.C. Contract Appeals Board, (D.C. Super. Ct. CA No. 2022 CA 000344 P (MPA)(issued August 30, 2022) (where a protester alleges that the awarding agency unfairly disclosed pricing data, the protester must file its protest within 10 days of when it had access to or reasonably could have gained access to the agency pre-award debriefing letter containing references to the alleged disclosure).</li></ul>	<p>Promotes confidence in the integrity and expertise of the District's government contracts adjudication and resolution processes.</p>	<p>Promotes confidence in the integrity and expertise of the District's government contracts adjudication and resolution processes.</p>

### 3 2022 OBJECTIVES

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Strategic Objective	Number of Measures	Number of Operations
Increase public confidence in the DC procurement process through the efficient, effective and fair disposition of public contracting disputes.	4	1
Increase use of Alternative Dispute Resolution (ADR) in resolving cases without the need for traditional litigation models, resulting in faster, more efficient dispositions of cases and greater party satisfaction.	1	1
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	1

## 4 2022 OPERATIONS

Operation Title	Operation Description	Type of Operation
<b>Increase public confidence in the DC procurement process through the efficient, effective and fair disposition of public contracting disputes.</b>		
Reduce the number of open appeal cases that are three years or older through docket review and strategic resource allocation	Working goal is to keep the number of appeals cases that are three years or older to less than 2%	Daily Service
<b>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.</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>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.</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

## 5 2022 STRATEGIC INITIATIVES

In FY 2022, Contract Appeals Board had 1 Strategic Initiatives and completed 100%.

Title	Description	Completion to Date	Update	Explanation for Incomplete Initiative
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.	Complete	Phase 2 of the Board's digitization and scanning project was awarded by OCP to SBE DigiDoc on February 1, 2022. All remaining Phase 2 document boxes were removed for processing by DigiDoc on March 24, 2002. DC Archives advises that, while the Board can proceed with preparing the documentation for the transfer of Phase 2 scanned documents to the Washington National Records Center/Federal Records Center (FRC), FRC is currently operating by appointment, only. Currently, the earliest available appointments for delivery would be October 2022 (FY23). As of September 2022, DigiDoc has completed scanning approximately 339,000 pages of archival documents and construction drawings, and has delivered all of these documents to the Board pending transfer to DC Archives/FRC in FY23/FY24 as applicable. As such, this initiative has been completed.	



## 6 2022 KEY PERFORMANCE INDICATORS AND WORKLOAD MEASURES

### Key Performance Indicators

Measure	Directionality	FY 2020	FY 2021	FY 2022 Target	FY 2022 Q1	FY 2022 Q2	FY 2022 Q3	FY 2022 Q4	FY 2022	Was 2022 KPI Met?	Explanation of Unmet KPI
<b>Increase public confidence in the DC procurement process through the efficient, effective and fair disposition of public contracting disputes.</b>											
Percent of Protests resolved within 60 business days	Up is Better	94.1%	100%	95%	Annual Measure	Annual Measure	Annual Measure	Annual Measure	88.46%	Nearly Met	In FY22, 88% of the protest cases closed by CAB in FY22 were closed within 60 business days of the initial filing date, and the remaining protests (12%) were closed within several days of the 60 business-day deadline.
Percent of decisions sustained on appeal	Up is Better	No Applicable Incidents	No Applicable Incidents	100%	Annual Measure	Annual Measure	Annual Measure	Annual Measure	100%	Met	N/A
Percent of Appeals resolved within 4 months of the cases being ready for decision	Up is Better	92.9%	100%	90%	Annual Measure	Annual Measure	Annual Measure	Annual Measure	100%	Met	N/A
Percent of pending Appeals that are three years old or less	Up is Better	100%	100%	90%	Annual Measure	Annual Measure	Annual Measure	Annual Measure	100%	Met	N/A
<b>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.</b>											
Percent of cases resolved through settlement	Up is Better	50%	81.8%	50%	Annual Measure	Annual Measure	Annual Measure	Annual Measure	41.03%	Unmet	While the Board formally encourages settlement in all disputes before it, settlement ultimately is a legal strategy determination made solely by the parties in a given dispute.
<b>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.</b>											

Key Performance Indicators (continued)

Measure	Directionality	FY 2020	FY 2021	FY 2022 Target	FY 2022 Q1	FY 2022 Q2	FY 2022 Q3	FY 2022 Q4	FY 2022	Was 2022 KPI Met?	Explanation of Unmet KPI
Percent of new cases using electronic filing system	Up is Better	83.3%	91.2%	100%	Annual Measure	Annual Measure	Annual Measure	Annual Measure	92.31%	Nearly Met	While the Board encourages all litigants to utilize its electronic case filing system, alternative filing options such as filing by mail and hand-delivery remain to ensure access to justice is not impaired.
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%	Annual Measure	Annual Measure	Annual Measure	Annual Measure	100%	Met	N/A

Workload Measures

Measure	FY 2020	FY 2021	FY 2022 Q1	FY 2022 Q2	FY 2022 Q3	FY 2022 Q4	FY 2022
<b>Reduce the number of open appeal cases that are three years or older through docket review and strategic resource allocation</b>							
Number of new cases filed	24	34	Annual Measure	Annual Measure	Annual Measure	Annual Measure	26
Number of cases resolved	36	22	Annual Measure	Annual Measure	Annual Measure	Annual Measure	39
<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</b>							
Number of Scheduling Orders issued encouraging settlement	24	34	Annual Measure	Annual Measure	Annual Measure	Annual Measure	26
Number of cases resolved through settlement/voluntary withdrawal	18	9	Annual Measure	Annual Measure	Annual Measure	Annual Measure	16
<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</b>							
Number of archived protest and appeals cases digitized and uploaded to the public website	0	1	Annual Measure	Annual Measure	Annual Measure	Annual Measure	1
Number of new cases filed and processed electronically	21	31	Annual Measure	Annual Measure	Annual Measure	Annual Measure	24
Number of documents filed in new cases	2043	1574	Annual Measure	Annual Measure	Annual Measure	Annual Measure	1538