

Government Contracts Advisory

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The Armed Services Board Reports Increased Appeals and ADR Activity in Fiscal Year 2007; The Civilian Board Issues its First Annual Report

The Armed Services Board of Contract Appeals (ASBCA) and the Civilian Board of Contract Appeals (CBCA) recently issued their annual reports concerning activity through 30 September 2007. The ASBCA reported a rise in the number of appeals docketed, resolved and referred to Alternate Dispute Resolution (ADR) services during the most recent Fiscal Year. The CBCA had a surprisingly high level of activity during its first year.

In Fiscal Year 2007, the ASBCA docketed 624 appeals challenging Final Decisions of Defense Department agencies. This represents a 42% increase over the number of appeals the ASBCA docketed during Fiscal Year 2006. According to the ASBCA's statistics, appeals against Final Decisions issued by the Air Force and the Army experienced the greatest increases. Contractors docketed 208 appeals against Air Force Final Decisions during Fiscal Year 2007, which was more than three times the number of Air Force-related appeals docketed in Fiscal Year 2006. Similarly, there were 56 more appeals docketed against the Army than during the previous year, representing a 61% increase from 2006.

The ASBCA disposed of a total of 539 appeals in Fiscal Year 2007, which was nine more than during the previous year. Of these, the ASBCA issued 134 decisions. Significantly, 96 of the 134 (71.6%) matters disposed of on the merits were sustained in whole or in part, representing an increase from the 62.8% "sustain rate" achieved by contractors during Fiscal Year 2006. The remainder of the 539 appeals disposed of by the ASBCA (405 in total) occurred either after the parties had settled their disputes, by virtue of jurisdictional grounds, or because of failures to prosecute.

During Fiscal Year 2007, parties requested the ASBCA's ADR services 36 times, covering 99 appeals. In six of these 36 instances, the parties requested binding ADR. Twelve of the ADR requests received during 2007 remained pending at the close of the Fiscal Year. Twenty-nine of the 31 requests that went through ADR in Fiscal Year 2007 were successfully resolved.

In its first Annual Report dated October 30, 2007 (covering the CBCA's first nine months,) the CBCA reported that contractors had docketed 334 appeals in Fiscal Year 2007. The CBCA disposed of 361 cases during 2007, with 155 decisions on the merits. Of those 155 decisions, the CBCA found merit in 72 cases (46.4% sustain rate.) The CBCA also dismissed a total of 206 cases during Fiscal Year 2007, of which 173 (84%) were voluntary dismissals caused by settlements and 33 were dismissed by CBCA jurisdictional decision.

We anticipate increased activity during the current Fiscal Year, a trend that likely will continue into future years, given the large number of Iraq reconstruction and Katrina issues that are beginning to surface at the Boards. With this increased activity, contractors should expect and plan for longer time periods between the docketing of their appeals and hearings on the merits. Accordingly, contractors interested in shortening the process should seriously consider using the Boards' ADR services, which appear largely successful in resolving claims referred to such services, at a significant cost savings.

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