

CBCA Annual Report Signals Good News for Contractors

Litigation Alert

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The Civilian Board of Contract Appeals (CBCA) recently published its [Annual Report for Fiscal Year \(FY\) 2023](#). The report is made available to the public and can provide key insights for companies contracting with civilian federal executive branch agencies. The FY 2023 report shows interesting trends in cases filed at the CBCA. We'll review how statistics for FY 2023 compared to [previous fiscal years](#) and discuss emerging trends in government contracts cases before the CBCA.

The CBCA provides prompt, efficient, and inexpensive resolutions of various disputes involving civilian federal executive branch agencies. Most significantly, the CBCA adjudicates contract disputes under the Contract Disputes Act (CDA) between government contractors and civilian executive agencies, including the Central Intelligence Agency (CIA), Department of Homeland Security (DHS), Department of Commerce (DOC), Department of Energy (DOE), Department of the Interior (DOI), Department of Justice (DOJ), Department of Labor (DOL), Department of State (DOS), Department of Transportation (DOT), Department of Education (ED), General Services Administration (GSA), Department of Health and Human Services (HHS), Office of Personnel Management (OPM), U.S. Agency for International Development (USAID), Department of Agriculture (USDA), and Department of Veterans Affairs (DVA). Resolution of CDA disputes can be accomplished through dispositive motions, holding a hearing, decisions on the record, or settlement through the CBCA's Alternative Dispute Resolution (ADR) program. The CBCA operates pursuant to the CBCA rules and uses the Federal Rules of Evidence and Federal Rules of Civil Procedure as a guide.

The CBCA has a successful ADR program that parties can utilize to resolve CDA disputes without a hearing and provides ADR services to executive agencies on matters not covered by the CDA. These agencies include the DOE National Laboratories, the Federal Aviation Administration (FAA), the Smithsonian Institution, and the Federal Emergency Management Agency (FEMA).

The Number of CDA Appeals Docketed Significantly Increased

The CBCA docketed 247 new CDA appeals in FY 2023. This represents a 40 percent increase from FY 2022 where only 177 new CDA appeals were docketed. FY 2021 was similar to FY 2022 docketing only 185 new CDA appeals. Interestingly, appeals in DOS contracts far exceeded any other agency, with 115 of the 247 appeals for the year. The DVA came in a distant second place with 52 appeals and GSA third with 24 appeals being filed. These three agencies accounted for over 77 percent (191 of 247) of all appeals filed at the CBCA. FY 2023 marks the first fiscal year the CBCA provided agency specific appeals data in its available online annual reports.

This significant increase in docketed appeals is particularly interesting considering the trend at the Armed Services Board of Contract Appeals (ASBCA), the CBCA's counterpart for Department of Defense (DoD) and National Aeronautics and Space Administration (NASA) contracts, where the number of cases docketed has decreased over the last several years. We discussed trends gleaned from the ASBCA's Annual Report for FY 2023 [here](#).

The Number of Cases Resolved on the Merits Increased

At the same time that the number of docketed cases increased, the number of cases resolved by the CBCA during FY 2023 decreased. In FY 2023, the CBCA resolved 185 cases compared to 194 cases resolved in FY 2022. Importantly, the CBCA disposed of fewer cases due to voluntary dismissals and resolved more cases on the merits.

In FY 2023, the CBCA resolved 185 CDA appeals, with 47 of those being on the merits. This represents 25 percent of appeals resolved on the merits. This is an increase from the prior FY where the CBCA resolved 194 cases, with only 43 (22 percent) of those on the merits.

CDA appeals nonvoluntarily dismissed by decision also decreased from FY 2022 with 13 appeals dismissed by decision in FY 2023 compared to the 15 appeals dismissed by decision in FY 2022.

The CBCA Ruled in Favor of Contractors in 45 Percent of Merits Decisions, a Significant Increase from Fiscal Year 2022

During FY 2023, the CBCA ruled in favor of the contractor in 45 percent of appeals that were resolved by a decision on the merits. Of the 47 appeals decided on the merits, 10 appeals were granted in full while 11 appeals were granted in part. This is a substantial increase from the 21 percent of appeals that were resolved in favor of the contractor in a decision on the merits in FY 2022. In FY 2022, of the 43 appeals resolved on the merits, only one appeal was granted in full and eight appeals were granted in part.

The Net Change in the CBCA's Docket Count for CDA Appeals Increased by 62

At the start of FY 2023, the CBCA had 264 CDA appeals on the docket. At the end of FY 2023, the CBCA had 326 CDA appeals pending. This represents a 23 percent increase in cases on the docket during last FY. During FY 2022, the CBCA's docket count decreased by 17.

Pursuit of Alternative Dispute Resolution Decreased, But the Program Remains Successful in Resolving Disputes

The number of cases completed using the CBCA's ADR program substantially decreased in FY 2023 from 66 cases that completed ADR in FY 2022 compared to the 43 cases that completed ADR in FY 2023. At the same time, the percentage of cases that utilized ADR and were fully resolved increased from 65 percent in FY 2022 (43 fully resolved cases out of 66) to 70 percent in FY 2023 (30 fully resolved cases out of 43).

Conclusion

Overall, the annual report is good news for contractors. While the number of CDA appeals grew in FY 2023, so did the number of appeals resolved on the merits. In addition, fewer appeals are being dismissed by decision. The CBCA also demonstrated a willingness to rule in favor of the contractor at a considerably higher rate than in fiscal years past. Contractors should take solace in these trends when considering potential contract claims against the government.

If you have questions about the 2023 CBCA Annual Report or litigating at the CBCA in general, please contact one of the Miller & Chevalier attorneys listed below.

Scott N. Flesch, sflesch@milchev.com, 202-626-1584

Alexandra S. Prime*

**Former Miller & Chevalier attorney*

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