

# ANNUAL REPORT

United States Civilian  
Board of Contract Appeals



Fiscal Year 2023

October 1, 2022 - September 30, 2023

# MESSAGE FROM THE CHAIR



The Civilian Board of Contract Appeals (CBCA or Board), with its highly experienced judges expert in the field of government contracts law, continues to work to provide a more efficient and less expensive alternative to litigation in the Federal courts. We make every effort to hear and decide cases timely and fairly, and we continually update our systems and technology in order to expedite and improve the Board process. To that end, we will soon be launching a new electronic filing platform that should provide litigants greater ease in filing and monitoring their cases.

This past year, the CBCA experienced a significant change in its staff. Sadly, a beloved judge, Jerome Drummond, passed away in June. We truly miss Judge Drummond's presence in the office, his kindness, keen insights, and sense of humor. In addition, several members of our support staff retired earlier in the year, necessitating a number of new hires. In August, Jonathan Kang was appointed as a new Board judge, and we have enjoyed working and collaborating with our new colleague. Chris Wright joined the Board to act as our human resources and facilities liaison. We also added three new staff members who handle the judges' dockets—Dakota Miles, Isabelle Leon, and Anthony Haskins. Finally, we hired an additional attorney for our counsel's office, Carolyn Carmody. We are excited to work with these new staff members and to tap into their knowledge and expertise to enhance the Board's operations.

I remain impressed by the work that a handful of judges (12) and small staff are able to accomplish. While our dockets are full and our caseload has continued to increase—409 cases docketed in Fiscal Year (FY) 2023 (up from 372 in FY 2022)—we regularly meet deadlines and timely issue our decisions. FEMA arbitrations (48 this year) continue to command significant Board resources, as well, given the high number of arbitrations and the requirement that three judges sit to decide them. We also hosted a greater number of in-person hearings, mediations, and arbitrations at the CBCA this year, which has increased the workload for both our judges and staff. Nevertheless, the Board continues to conduct hearings and mediations virtually, having found that to be a convenient and less expensive option for our litigants—especially those located outside of the Washington, D.C., metropolitan area.

Of course, we are ably assisted by our three full-time law clerks (Sophie Marsh, Taylor McDaniels, and Allison Moors), summer law clerks, and spring and fall student law clerks. Our law clerk program has been thriving for many years, with over 110 student and post-graduate law clerks having worked at the Board. We deem it a priority to train future government contract lawyers and are always happy to see our past law clerks working, in both the public and private sectors, in the government contract field.

The CBCA judges also continue to engage with the legal community through participation in bar association activities, on bar association boards, as speakers on panels and at conferences, and as professors at the local law schools. We deem this outreach to be a benefit to the legal community and to our judges as we strive to keep abreast of relevant legal issues and litigation topics and to make the litigation process at the Board easier to navigate. I am proud to be a judge at and a leader of the CBCA and look forward to the continued evolution of the CBCA as we move into 2024.

*Erica S. Beardsley*

Erica S. Beardsley, Board Chair

# DECISIONS OF NOTE

## ***Alan E. Fricke Memorials, Inc. v. Department of Veterans Affairs, CBCA 7352, et al. (Jan. 12, 2023)***

Alan E. Fricke Memorials, Inc. (Fricke) entered into two contracts with the Department of Veterans Affairs (VA) in October 2020 to provide “all labor and materials necessary to perform inscription services” for headstones and other markers at two separate VA cemeteries, with performance (following the exercise of two options) to conclude in October 2022. Between January and September 2021, however, Fricke fell behind in the inscription work, with a backlog at one point of more than 700 headstone markers that Fricke indicated resulted from delays in delivery of necessary supplies. In October 2021, after having diverted new work to other contractors, the contracting officer issued cure notices for each of the two contracts and indicated that Fricke’s failure to provide a plan assuring future performance would support termination of the contracts for default. By the time the contracting officer issued the cure notices, however, Fricke had reduced the backlog to a total of eleven headstones. Fricke did not respond to the cure notices but, by November 2021, had completed all backlogged work. Nevertheless, in December 2021, citing in part Fricke’s failure to provide assurances of future performance, the contracting officer terminated the contracts for default. The Board converted them to terminations for convenience, finding that the language in the cure notices was insufficient to put Fricke on notice that the contracting officer sought a plan as to how Fricke was going to receive and process orders in the future and that, by the date of the cure notices, Fricke had no delinquent orders to support a default termination.

## ***BES Design/Build, LLC v. Department of Veterans Affairs, CBCA 6453, et al. (Apr. 7, 2023)***

In September 2015, BES Design/Build, LLC (BES) entered into a construction contract with the Department of Veterans Affairs (VA). After the VA terminated BES’s contract for default, BES filed appeals with the Board challenging the termination. In challenging the default termination, BES argued that the contracting officer had waived the extended deadline for project completion set forth in a contract modification by allowing the contractor to continue working the project for five months beyond the completion date. The Board recognized that the Government can waive a contract completion deadline through non-enforcement, particularly in supply contracts, but that, in construction projects, waiver typically occurs only in “unusual circumstances” where an unreasonable period of time has elapsed or where the Government allows the contractor to continue performance without communicating concern or its intention to assess liquidated damages. In this case, the Government continued communicating concerns to the contractor after the contract deadline had passed, including through issuance of a show cause notice. In such circumstances, the Board found no waiver of the right to terminate and that the termination was justified. The Board also denied affirmative money claims that BES raised, seeking overhead costs incurred during an agency-caused fifty-nine-day delay and requesting payment of unpaid pay application for work performed. As for BES’s request for overhead costs, the Board found that BES had provided no support for overhead costs that BES sought for an agency-caused fifty-nine-day delay and that BES could not pursue a claim for monies owed under a disputed pay application because any such monies belonged to BES’s surety, not BES.

***Cobra Acquisitions, LLC v. Department of Homeland Security, CBCA 7724 (Sept. 21, 2023)***

Following Hurricane Maria in September 2017, the Federal Emergency Management Agency (FEMA) entered into a cooperative agreement with Puerto Rico, as grantee, to allow FEMA to provide disaster assistance under the authority of the Stafford Act, 42 U.S.C. §§ 5121–5207 (2018), and its implementing regulations (44 CFR 206.44 (2017)). Subsequently, the Puerto Rico Electric Power Authority (PREPA) entered into a contract with Cobra Acquisitions, LLC (Cobra) through which Cobra was to provide power restoration services. Even though FEMA was not a party to the PREPA-Cobra contract, the contract provided that “FEMA funds will be used to cover this contract” and that “FEMA has reviewed and approved this contract.” When PREPA failed to pay more than \$174 million that Cobra claimed was due and owing, Cobra submitted a certified claim directly to FEMA seeking payment of PREPA’s costs. The Board recognized that the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109, limits the Board’s jurisdiction to contracts with an executive agency and that FEMA was not a party to the Cobra-PREPA contract. In response to Cobra’s allegation that the FEMA contracting officer had made oral statements creating a suretyship arrangement under the PREPA-Cobra contract, the Board determined that a suretyship arrangement is not a contract for the procurement of goods or services and does not fall under the CDA’s definition of a procurement contract, precluding the Board from exercising jurisdiction. Although Cobra argued in the alternative that PREPA was acting as a purchasing agent for FEMA when entering into the PREPA-Cobra contract, the Board held that the Stafford Act and 44 CFR 206.44 effectively preclude grantees from acting as FEMA purchasing agents. The Board also rejected Cobra’s arguments based upon its alleged status as a third-party beneficiary of FEMA’s cooperative agreement, finding that the cooperative agreement was not a procurement contract and because, even if it were, the Board lacks jurisdiction to entertain third-party beneficiary contract claims.

***HPM Corporation v. Department of Energy, CBCA 7559 (July 12, 2023)***

HPM Corporation (HPM) worked under a type of hybrid contract with the Department of Energy (DOE) that incorporated fixed-price, cost-reimbursement, and indefinite-quantity contracting elements. The contract contained two standard clauses regarding the Government’s audit rights—Federal Acquisition Regulation (FAR) 52.215-2 and FAR 52.216-7—that typically are included in cost-reimbursement contracts and a DOE-specific clause that addresses access to records. HPM filed a petition asking the Board to declare that, in any incurred-cost audit, DOE could only request access to records relating to the cost-reimbursement portions of HPM’s contract and was barred from accessing any materials associated with the fixed-price portion. In considering HPM’s non-monetary claim, the Board first determined that, despite recent precedent from the Court of Appeals for the Federal Circuit, the interpretation dispute at issue fell within the Board’s jurisdiction because HPM could not assert a money claim, meaning that HPM was not attempting to reframe a monetary claim as a non-monetary one. On the merits, however, the Board disagreed with HPM’s attempt to divvy its hybrid contract into segregable parts for purposes of applying the contract’s audit clauses. The Board recognized that, if a contract provides the Government with a right to audit, the Board has no basis upon which to tell the auditor what information it needs to conduct a proper audit or to micro-manage the audit process: cost shifting and misallocation between cost-reimbursement and fixed-price contracts is a concern of the Government, and incurred-cost audits can easily become complex and time-intensive. The Board found that had HPM wanted to limit the manner in which DOE could apply the audit provisions in its contract, HPM should have raised its concerns before executing its contract. The Board also rejected HPM’s request that the Board require DOE to create some kind of firewall to shield its cost documents from other than a limited subset of government employees, finding that the contract contained no language to support HPM’s request.

***Hughes Group LLC v. Department of Veterans Affairs, CBCA 5964 (Mar. 6, 2023)***

In November 2015, the Department of Veterans Affairs (VA) awarded a contract for janitorial services to Hughes Group, LLC (Hughes). During the execution of the contract, both the VA and Hughes voiced complaints. The agency believed that Hughes was not providing the level of service required by the contract, and Hughes noted that several pieces of Government-furnished equipment were broken or poorly functioning and that the VA was slow to provide replacements or make repairs. As a result of recurring problems, the VA issued a cure notice and, for months, stopped paying Hughes for its services. Ten days after paying Hughes' overdue invoices, the agency terminated the contract for cause. The Board recognized that the Government may terminate a contract for cause as long as it is able to show, by a preponderance of the evidence, that the termination decision was justified. The Government can also waive its right to terminate, however, through actions or statements indicating a preference for the contractor's continued performance. Here, the VA's exercise of an option year even though Hughes had failed significantly to improve performance and its failure to issue a termination for cause until the end of the contract performance period, while simultaneously directing Hughes to keep performing, were sufficient to establish that the VA had effectively waived its right to terminate for cause. As such, the Board converted the termination to one for the convenience of the Government.

***Washington River Protection Solutions LLC v. Department of Energy, CBCA 7056 (June 28, 2023)***

Washington River Protection Solutions LLC (WRPS) appealed the decision of a Department of Energy (DOE) contracting officer demanding repayment of staff augmentation expenses incurred between 2009 and 2018. The basis for the repayment demand was that approximately \$3 million of identified costs did not meet the test for reasonableness set forth in Federal Acquisition Regulation (FAR) 31.201-3. Because DOE believed that the amount of unreasonable costs was greater than those it had found in its audit, it applied a "2x factor" and doubled the amount sought to \$6 million. The Board found that WRPS had met its burden to establish that most of the costs were reasonable, using several different techniques to show that the costs were "generally recognized as ordinary and necessary for the conduct of the contractor's business or the contract performance" or based upon competition. The Board found that the costs incurred for one individual were not reasonable because WRPS failed to establish that the individual met the qualifications for the position. The Board declined to apply DOE's "2x factor" to this amount because FAR 31.201-3 requires the contracting officer to identify a "specific cost" that is challenged as unreasonable.

***SBA Archway Helena, LLC v. General Services Administration, CBCA 5997, et al. (Mar. 6, 2023)***

SBC Archway Helena, LLC (SBC) sought \$395,474.58 under a design/build lease with the General Services Administration (GSA). SBC claimed that GSA was at fault for 234 days of delay in issuing a notice to proceed (NTP) after the contract was awarded, which deferred occupancy and the start of rent payments. The Board dismissed the agency's contention that SBC was attempting to collect rent early (before the Government had actually occupied the building), explaining that the pre-occupancy costs at issue reflected expenses during the lease period that would not have been incurred under the lease without the delay. Nevertheless, the Board disagreed with SBC's calculation of when the NTP should have been issued, ultimately finding GSA liable for 138 days of delay due to the delayed NTP issuance. In determining the amount to be awarded, the Board found that SBC was entitled to a percentage of the substantiated, compensable costs incurred during the claimed delay period, including the agency's share of local property taxes, insurance, mortgage, operating costs, and the construction loan for the delay period.

***South Texas Health System v. Department of Veterans Affairs, CBCA 6806 (Aug. 23, 2023)***

South Texas Health System (STHS), also known as McAllen Hospitals LP, held a contract with the VA through which, following the VA's exercise of several options, STHS provided medical services to veterans from 2009 through 2015. Under the contract, the VA was to pay for "actual services provided" in accordance with a specified percentage of the then-current Medicare rate for each service. If a patient was admitted to the hospital, STHS would have to notify a particular VA office within one business day to obtain the VA's authorization for coverage; if the VA did not approve coverage within twenty-four hours, STHS had to consider the patient as private pay. During contract performance, multiple disputes arose regarding bills that STHS submitted and payments received under the contract. Between 2012 and 2017, STHS filed five appeals with the Board challenging various payment denials, each of which STHS and the VA eventually settled. One of those five appeals involved a request that the VA pay in-patient rates for various patients when the VA had only approved "observation" status for those patients; the parties subsequently settled that case and, in 2018, executed a settlement agreement that released all claims involving admission status disputes that "could have been asserted in the Appeal." Subsequently, in 2020, STHS submitted a new claim to the VA contracting officer, claiming additional monies for what it asserted were additional incorrect "observation" status designations for patients other than those at issue in the prior CBCA appeal. Although the VA contracting officer denied that claim based upon the parties' prior settlement agreement, the Board found that, interpreting the specific language of the original certified claim and the settlement release, the release only applied to patients specifically identified in the original certified claim. Nevertheless, the Board found that many of STHS's patient claims, first asserted in 2020, were barred by the six-year statute of limitations in the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101–7109 (2018). Looking at the patient authorization approval process in the contract, the Board held that STHS was or should have been aware of the parties' dispute no later than the date on which the VA authorized "observation" rather than in-patient status or failed timely to approve STHS's requested status. The Board found that the VA had provided its determinations on many of STHS's newly asserted patient categorizations more than six years before STHS submitted its most recent claim to the contracting officer challenging them and that those claims were time-barred. The Board rejected STHS's arguments that past settlement discussions with the VA on related claims somehow equitably tolled the statute of limitations.

***OST, Inc. v. Department of Homeland Security, CBCA 7077, et al. (July 31, 2023)***

Beginning in 2008, OST, Inc. (OST) administered certain insurance and pension fund services for a flood insurance program under a cost-plus-fixed-fee contract with the Federal Emergency Management Agency (FEMA) that was subject to an annual cost ceiling. FEMA, at its discretion and as deemed necessary, could increase the cost ceiling following proper notice from OST in accordance with the contract's "Limitation of Costs" and "Limitation of Funds" clauses. Although the original performance period was limited to the 2008 calendar year, FEMA exercised a series of annual options that extended the contract for several additional years. During performance, FEMA paid invoices from OST that exhausted all funds allocated to the contract except for two years of performance—2011 and 2012—in which OST's total invoiced costs, taken together, fell below the cost ceilings by almost \$2 million. In 2017, OST submitted a certified claim to the FEMA contracting officer seeking additional costs that OST's subcontractor, AmeriTask LLC, had allegedly incurred between 2009 and 2013 in performing its subcontract but failed to bill because of problems with its accounting systems. OST appealed from the contracting officer's "deemed denial" of that claim. The Board found that, even though the subcontractor had warned OST during performance that it might be underbilling its incurred costs in the years 2009 through 2013, OST never provided any notice to FEMA before completing contract performance that it anticipated exceeding the cost ceiling in the contract for any given year. OST argued that the lack of notice did not matter because there was still almost \$2 million available from the 2011 and 2012 performance years that could be used to pay the subcontractor's extra costs from 2009 through 2013. The Board determined that fiscal year appropriations rules require that services be charged to the fiscal year in which they are rendered, meaning that appropriations remaining available for 2011 and 2012 could not be used for unpaid costs attributable to 2009, 2010, or 2013. The Board also recognized that OST could not recover costs incurred in 2009 through 2013 that exceeded the cost ceilings for those years because it never provided timely notice of upcoming cost overruns; OST's failure precluded FEMA from evaluating whether to authorize work beyond the established cost ceiling. Nevertheless, the Board held that OST might recover the late-billed 2011 and 2012 costs (though not up to the cost ceilings) to the extent that the costs were adequately supported and were not otherwise barred by the Contract Disputes Act's statute of limitations.

# CBCA LAW CLERKS

## 2023-2024



Ms. Sophie Marsh is a 2023 graduate of The George Washington University Law School, where she received a J.D. with a concentration in Government Procurement Law. While in law school, Ms. Marsh was a Senior Articles Editor on the Public Contract Law Journal and was the recipient of the Ruth Burg Government Procurement Law Scholar award. Her Note, *Inflated Health Care Costs: Why Hospital Billing Practices Are Problematic and How Federal Procurement Can Help*, was published in the fall 2023 issue of the Public Contract Law Journal. Ms. Marsh also interned at the CBCA, U.S. Court of Federal Claims, Office of Special Masters, and Children's Law Center during law school. Ms. Marsh worked as a legal assistant at LexisNexis prior to starting law school and received her B.A. in Philosophy and Psychology, with a minor in Communication Studies, from the University of Denver in 2018.



Ms. Taylor McDaniels is a 2023 graduate of The George Washington University Law School. While in law school, Ms. McDaniels was the Senior Managing Editor of the Public Contract Law Journal. Her Note, *Improving Broadband in Appalachia: How Municipal Broadband Networks Can Bring High-Speed Internet to Millions*, was published in the fall 2022 issue of the Journal. She also interned at the General Services Administration's Acquisition Policy Division and the Securities and Exchange Commission's Division of Enforcement. Prior to law school, Ms. McDaniels received her B.B.A. in Management, *summa cum laude*, from the University of Kentucky with a minor in Communications.



Ms. Allison Moors is a 2023 graduate of The George Washington University Law School, where she received a J.D. with a concentration in Government Procurement Law. While in law school, Ms. Moors was a member of the Public Contract Law Journal and co-chaired the 2023 Arnold & Porter Government Contracts Moot Court Competition. She has interned at the Transportation Security Administration, the Department of Homeland Security, the Court of Federal Claims, and the law firm of Bass, Berry & Sims. Prior to law school, Ms. Moors worked as a contract manager in the aerospace industry. She received her B.A. in Economics and International Relations from Claremont McKenna College in 2016.



# CBCA WELCOMES NEW JUDGE

## **Jonathan L. Kang** Board Judge

Judge Kang joined the Board as a judge in August 2023 after a long career with the United States Government Accountability Office (GAO), Procurement Law Group, Office of the General Counsel. For his last ten years with GAO, Judge Kang also served on its Contract Appeals Board, first as a member beginning in 2013, then as Vice Chair from 2017 to 2018, and finally as Chair from 2018 to 2023. Prior to joining GAO, Judge Kang spent several years as an associate at Wiley Rein & Fielding LLP in Washington, D.C. He earned his undergraduate degree from Vassar College and graduated from The George Washington University School of Law. Judge Kang has already demonstrated that he is a huge asset to the Board, and we are thrilled to welcome him this year.



# CBCA WELCOMES NEW EMPLOYEES

## **Carolyn Carmody**

Carolyn Carmody joined the CBCA's legal department as an Attorney Adviser in October 2023. Her career before the Board includes sixteen years of advising contractors on federal government procurement proposal requirements and writing and conducting compliance reviews of proposal deliverables, five years as a Firefighter/Medic for the Fairfax County Fire and Rescue Department, and seven years litigating cases at private law firms. Carolyn is a graduate of the Georgetown University Law Center and Swarthmore College.

## **Christopher "Chris" Wright**

Chris Wright joined the Board in October 2022 as a program specialist in charge of personnel and human resources matters, as well as various aspects of facilities management. He came to us from GSA's Office of Human Resources Management (OHRM) after nearly twenty-four years working as a human resources specialist. Previously, Chris served in the Japan Exchange and Teaching Program as an assistant language teacher in the Japanese public school system. He received his B.A. in Anthropology from the University of Virginia.



# CBCA WELCOMES NEW EMPLOYEES

## LEGAL ADMINISTRATIVE SPECIALISTS

The Board recently welcomed three new Legal Administrative Specialists—Dakota Miles, Anthony Haskins, and Isabelle Leon—who are shown here with Joyce Arthur, Paralegal, and Charity Barnett, Deputy Clerk.



Shown left to right: Joyce Arthur, Charity Barnett, Dakota Miles, Anthony Haskins, and Isabelle Leon. Not pictured is paralegal Adrienne West.

### **Anthony Haskins**

Before joining the Board, Anthony Haskins worked as an appeals processing clerk for the U.S. Court of Appeals for Veterans Claims (CAVC) and as an intake clerk and case manager for the U.S. District Court for the Eastern District of Virginia, Alexandria Division. Mr. Haskins received his B.A. in Political Science from West Virginia University.

### **Isabelle Leon**

Isabelle Leon came to the Board after four years as a courtroom clerk for the District of Columbia Superior Court. Previously, she served as a deputy clerk in the Probate Division at the Superior Court. Mrs. Leon received her B.A. in Criminal Justice from the University of Maryland Eastern Shore.

### **Dakota Miles**

Dakota Miles joined us after five years of working as a legal assistant in various fields, including estate planning and tax law. She had also interned as a policy analyst for the Department of Public Safety—Ward 2 and the Gray Panthers of Metropolitan Washington—Ward 8. Ms. Miles received her B.A. in Criminology with a minor in Strategic Legal Management and Communications from Howard University.

# CBCA EMPLOYEE RECOGNITION

## **Rochelle Achoe**

Lead Management Analyst

The Board wishes to acknowledge over fifteen years of dedicated service by Rochelle Achoe, Lead Management Analyst. Rochelle joined the Board as a Management Analyst in 2008. Not only is Rochelle, as a warranted contracting officer, in charge of all procurements of goods and services for the Board, but she also assists in managing all phases of the Board's budget, including its formulation, execution, and administration. In addition, she has lead roles in handling the Board's office space, which includes working with GSA, our building landlord, and the Federal Protective Service on lease- and security-related matters. Prior to joining the Board, Rochelle worked in the General Services Administration's Office of the Inspector General (OIG) from 1988-2008 as a Budget Analyst and a Program Analyst with a contracting warrant. In those positions, Rochelle procured goods and services for the OIG's central and field offices. She received her Bachelor of Science degree in business in 1983 from North Carolina Agricultural & Technical State University in Greensboro, North Carolina. Rochelle's commitment to public service is admirable and greatly appreciated. Many thanks to Rochelle for her dedication and service.

## **Tara Mehrbach**

Deputy Chief Counsel

The Board thanks our Deputy Chief Counsel, Tara Mehrbach, for her dedicated service since joining the Board in February 2020. In addition to superbly handling her duties as a member of the Board's legal team, Tara has provided immeasurable assistance in a range of other functions. Within weeks of her arrival, Tara assumed the lead in developing and managing the Board's COVID-19 policy and our transition to full-time telework for the duration of the pandemic while helping to maintain the essential functions of our offices at 1800 M Street, NW. She operates as the Board's liaison with Congressional offices, GSA, and other agencies in developing and defending our annual appropriation requests and addressing other budgetary matters. She also works closely with Board Judge Sullivan on all aspects of our law clerk and student intern programs, from recruitment and interviews to training and end-of-clerkship evaluations. Tara began her legal career in the government contracts section of a major law firm before eventually transitioning to the Office of Medicare Hearings and Appeals, where she first wrote decisions for ALJs on Medicare appeals and ultimately served as an adjudicator deciding her own docket of cases submitted on the record. Tara earned her B.S. in Environmental Studies from Rutgers University, M.A. in Public Policy from the Eagleton Institute of Politics at Rutgers University, and J.D. from the University of Virginia School of Law. We thank Tara for her hard work, enthusiasm, and sense of humor.

# FISCAL YEAR 2023 STATISTICS

## Summary of Board Activity in FY 2023

FY 2023 was another busy year at the Board with 409 new cases docketed across 13 case types as shown on the next page along with key abbreviations. In summary, the Board received 246 CDA appeals and 163 other cases, including 46 FEMA arbitration requests, 38 travel and relocation cases, and 15 debt cases. The Board resolved 358 cases in FY 2023, with 141 of those on the merits. The net change in the Board's total docket count from the end of FY 2022 to the end of FY 2023 was +51.

Of the decisions on the merits, the Board granted the appeal in 10 instances, granted in part the appeal 11 times, and denied the appeal in 26 instances, which resulted in a finding of merit in whole or in part approximately 45% of the time. In FY 2023, the Board dismissed 174 cases, 154 of which were voluntarily dismissed and 20 of which were dismissed by decision.

The Board conducted 17 FEMA hearings in FY 2023 and 16 total CDA, FMCSA, and debt hearings. The Board also conducted 43 ADRs, 30 of which resolved the dispute and 13 of which did not.

The chart below details the total cases pending, filed, and resolved in FY 2023.

	ADR	Appeal	Debt	EALIA	FCIC	FEMA	FMCSA	ISDA	Other	Petition	Rate	RELO	TRAV	Total
On docket at start of fiscal year	31	264	2	1	1	21	1	9	2	0	0	10	4	346
Docketed	32	247	15	3	0	46	10	7	7	4	0	32	6	409
Resolved	43	185	14	0	1	46	11	5	7	4	0	34	8	358
Decision on merits	0	47	10	0	0	38	5	0	7	1	0	25	8	141
Granted	0	10	5	0	0	6	0	0	1	0	0	4	3	29
Granted in Part	0	11	0	0	0	5	4	0	0	1	0	4	2	27
Denied	0	26	5	0	0	27	1	0	6	0	0	17	3	85
Dismissals	0	138	4	0	1	8	6	5	0	3	0	9	0	174
Dismissed (voluntarily)	0	125	3	0	1	6	6	5	0	3	0	5	0	154
Dismissed by decision	0	13	1	0	0	2	0	0	0	0	0	4	0	20
ADR Outcome	43	0	0	0	0	0	0	0	0	0	0	0	0	43
Fully Resolved	30	0	0	0	0	0	0	0	0	0	0	0	0	30
Partially Resolved	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Not Resolved	13	0	0	0	0	0	0	0	0	0	0	0	0	13
Pending at close of fiscal year	20	326	3	4	0	21	0	11	2	0	0	8	2	397
Net change in docket	-11	62	1	3	-1	0	-1	2	0	0	0	-2	-2	51
Interlocutory Decisions	0	20	0	0	0	0	0	0	0	0	0	0	0	20

# FISCAL YEAR 2023 STATISTICS

The chart below details all new cases docketed by the CBCA during FY 2023 by case type.

	Oct.	Nov.	Dec.	1st QTR.	Jan.	Feb.	Mar.	2nd QTR.	Apr.	May	Jun.	3rd QTR.	Jul.	Aug.	Sep.	4th QTR.	FY TOTAL
ADR	1	2	0	3	0	8	3	11	3	2	1	6	2	6	4	12	32
Appeal	17	34	12	63	21	23	30	74	15	13	22	50	25	25	9	59	246
Appeal Recon	0	0	1	1	0	0	1	1	1	2	0	3	0	0	0	0	5
Appeal Remand	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1	1
Debt	0	0	0	0	2	4	3	9	0	0	5	5	0	1	0	1	15
EAJA Cost	0	0	0	0	0	0	0	0	0	0	0	0	1	2	0	3	3
FCIC	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
FCIC Recon	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
FEMA	6	5	2	13	6	2	4	12	3	1	4	8	7	5	1	13	46
FMCSA	0	0	2	2	1	0	1	2	2	2	2	6	0	0	0	0	10
ISDA	1	0	0	1	1	0	0	1	0	0	1	1	1	1	2	4	7
ISDA Recon	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Petition	0	0	0	0	0	0	3	3	1	0	0	1	0	0	0	0	4
Rate	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Rate Recon	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
RELO	2	4	3	9	1	3	3	7	3	2	3	8	3	3	2	8	32
RELO Recon	0	1	0	1	0	0	0	0	0	1	0	1	0	0	0	0	2
TRAV	1	1	1	3	0	1	0	1	1	0	0	1	0	0	1	1	6
TRAV Recon	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>TOTAL</b>	<b>28</b>	<b>47</b>	<b>21</b>	<b>96</b>	<b>32</b>	<b>41</b>	<b>48</b>	<b>121</b>	<b>29</b>	<b>23</b>	<b>38</b>	<b>90</b>	<b>40</b>	<b>43</b>	<b>19</b>	<b>102</b>	<b>409</b>

**ADR** – Alternative Dispute Resolution Case (includes those with an underlying appeal)

**Appeal** – Contract Disputes Act Appeal of a Contracting Officer's Final Decision (COFD)

**Debt** – Debt Collection Case

**EAJA** – Equal Access to Justice Act Case

**FCIC** – Federal Crop Insurance Corporation Case

**FEMA** – Federal Emergency Management Agency Arbitration

**FMCSA** – Federal Motor Carrier Safety Administration Case

**ISDA** – Indian Self Determination Act Case

**Petition** – Requesting an Order for a COFD

**Rate** – GSA Transportation Audit Case

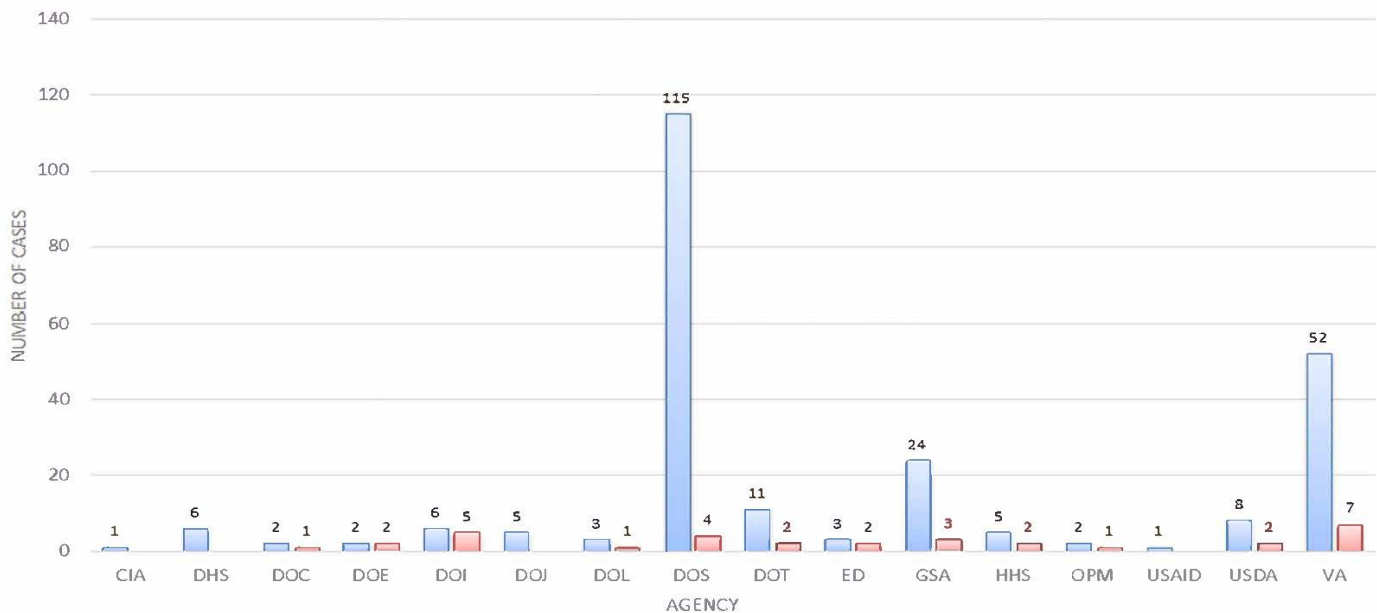
**RELO** – Relocation Expenses Case

**Recon** – Reconsideration of Any Type of Case

**TRAV** – Travel Expenses Case

# FISCAL YEAR 2023 STATISTICS

The chart below details the number of appeals filed and arbitrations requested by agency.



**CIA** – Central Intelligence Agency

**DHS** – Department of Homeland Security

**DOC** – Department of Commerce

**DOE** – Department of Energy

**DOI** – Department of the Interior

**DOJ** – Department of Justice

**DOL** – Department of Labor

**DOS** – Department of State

**DOT** – Department of Transportation

**ED** – Department of Education

**GSA** – General Services Administration

**HHS** – Department of Health & Human Services

**OPM** – Office of Personnel Management

**USAID** – Agency for International Development

**USDA** – Department of Agriculture

**VA** – Department of Veterans Affairs