

## **Recommendation 82: Provide Armed Services Board of Contract Appeals authority to require filing of contract appeals through an electronic case management system.**

### **Problem**

The Armed Services Board of Contract Appeal (ASBCA) would benefit from clarity on authorities related to its forthcoming electronic case management system (ECMS) to facilitate implementation of that system.

### **Background**

ASBCA is an independent, quasijudicial DoD agency. ASBCA's mission is to provide impartial, informal, expeditious, and inexpensive resolution of disputes arising out of or related to contracts entered into by DoD, including the Military Services, the National Aeronautics and Space Administration (NASA), and other departments and agencies as permitted by law.

ASBCA provides the primary forum to resolve DoD contract disputes between DoD agencies and contractors under DoD contracts, which makes it a critical part of the DoD acquisition system. Most Board appeals involve monetary claims, but ASBCA also adjudicates contract interpretation claims, certain contractor claims regarding performance ratings, and other nonmonetary claims.

DoD contractors have a choice to appeal adverse contracting officers' final decisions either to the COFC, within a year, or to ASBCA within 90 days. ASBCA is the forum for the vast majority of DoD contract disputes, particularly for small businesses.

To manage increasing caseloads and facilitate ASBCA operations, ASBCA has been pursuing an ECMS, similar to those used by all federal courts, and the vast majority of state courts, to allow electronic filing and offer some sort of electronic case management and docketing capabilities. ECMS will facilitate the day-to-day operations of the board. ASBCA expects to award a contract for an ECMS sometime before the end of 2018, and to have the system online within a year to 18 months of contract award.

### **Discussion**

The ASBCA caseload has about doubled from 532 in 2009. In the last 3 fiscal years, the number of cases pending has ranged from 1,087 (at the end of FY 2015) to 970 (at the end of FY 2017). Cases before ASBCA range in size from small cases of less than \$10,000 to appeals of \$100 million or more. There are nine currently pending cases. At least two cases before ASBCA have exceeded \$2 billion. The number of cases filed, the dollar amounts at issue, and the relative complexity of the cases have all steadily increased over the last decade.

Document filings at ASBCA include pleadings, motions, briefs, and evidence submitted to the presiding judges. All federal, and the vast majority of state, courts currently allow electronic filing and offer some sort of electronic case management/docketing capabilities. Board members frequently travel to hear cases, requiring ASBCA to ship hundreds of paper documents. The ability to review these files electronically, including the use of keyword searches, facilitates the decision-making process. In an effort to avoid undue burden on administrative staff, ASBCA would like to ensure mandatory use of the new system.

On May 1, 2018, the GAO implemented a mandatory web-based electronic filing and document dissemination system for the procurement protest system. The system was required by Congress in 31 U.S.C. § 355(c), as amended by Section 1501 of the Legislative Branch Appropriations Act, 2014 (Div. I of Pub. L. No. 113–76). Under this statute, GAO is also allowed to collect filing fees to offset the costs of the electronic filing system. ASBCA would welcome similar language from Congress to require establishment and operation of a mandatory electronic case management system that includes electronic filing and document management, as well as internal case tracking software. Congress should also provide ASBCA the discretionary authority to collect fees to offset the costs of operating and maintaining the system without obligation to use it, in case collection of these fees becomes feasible in the future.

Because many of the companies doing business with DoD also do business with other agencies of the federal government, these authorities should apply to all agency boards as defined by 41 U.S.C. § 7101.

## **Conclusions**

Using ECMS will facilitate ASBCA’s day-to-day operations. Revising Title 41 to ensure mandatory contractor and contracting officer use of the system—in line with the statutory authority granted to GAO when it adopted a similar system—will facilitate adoption of the electronic case management system and ease administrative burden. The Defense Acquisition Regulations (DAR) Council should coordinate regulatory implementation at the FAR level. The new processes that will come on line with the system will ultimately increase ASBCA productivity.

## **Implementation**

### ***Legislative Branch***

- Revise Title 41 to facilitate establishment of a case management system at the Armed Services Board of Contract Appeals.

### ***Executive Branch***

- There are no regulatory changes required for this recommendation.

### ***Implications for Other Agencies***

- The recommendation stated here has implications for other federal agency Board of Contract Appeals (BCAs); the FAR Council should revise FAR Part 33.2, Disputes and Appeals, to align with the recommended statutory revision to authorize the establishment of case management systems and corresponding fee structures at the relevant BCAs.