

# GOVERNMENT CONTRACTS AND LITIGATION SECTION



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### **Brief Summary:**

**This letter advises the Mayor about the upcoming vacancies on the D.C. Contract Appeals Board and asks the Mayor to make the necessary judicial appointments or reappointments for the continued operation of the Board. The letter points out that, without a quorum (three judges), the Board will have no authority to decide cases. The consequent delay will not only undermine contract dispute resolution in the District, it may well result in increased costs because of interest penalties payable to contractors. Two judicial appointments or reappointments should therefore be made as soon as possible.**

DRAFT
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May 16, 1995

The Honorable Marion Barry, Jr.  
Mayor  
The District of Columbia

**Re: Upcoming Vacancies on District of Columbia  
Contract Appeals Board**

Dear Mr. Mayor:

We are writing on behalf of the District of Columbia Bar's Section on Government Contracts with respect to the District of Columbia Contract Appeals Board ("Board").<sup>1</sup>

As you know, the Board is a statutorily created body within the executive branch of the District government.<sup>2</sup> The members of the Board are appointed by the Mayor with the advice and consent of the Council.<sup>3</sup>

Members of the Board serve a term of 4 years (or the balance of any unexpired term).<sup>4</sup> A quorum of 3 members is necessary for the Board to conduct its business.<sup>5</sup> At the present time, there are three members of the Board. The terms of two of the members (including the chief administrative judge) expire in mid-summer, 1995.

The Board plays a crucial role in the administration and adjudication of procurement actions for the D.C. government. Contractors who receive decisions on claims related to contracts with the District government may appeal to the Board for review of the administrative decision. The Board is the exclusive forum for such appeals.<sup>6</sup> In addition, the Board decides bid protests, which address the propriety of the District's contract awards.

With the terms of two Board members expiring in the very near future, our Section is concerned that pending and new appeals may be unduly delayed for lack of

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a three member quorum. Such delay will be detrimental to an efficient appeal system and disruptive to the contracting parties (the D.C. government and the private contractors). Such delays would likely discourage contractors from contracting with the District, which would eventually lead to less competition and higher costs for the District.

In addition, the D.C. government must pay interest on any amounts ultimately found due to a contractor, from the date a claim is presented until paid. Thus, delays in deciding appeals will result in added costs from interest accrual during the pendency of appeals with the resultant and obvious adverse impact on the fiscal affairs of the D.C. government. The Board also has jurisdiction to hear appeals concerning claims for interest penalties that a District agency has failed to pay in accordance with the Quick Payment Provisions of D.C. Code § 1-1174. Delays in deciding these matters will likewise tax the limited resources of the D.C. government.

In light of the essential role the Board plays in the resolution of contract disputes, the District of Columbia Bar's Government Contracts and Litigation Section respectfully recommends that reappointments or appointments be made of individuals meeting the qualifications set forth in D.C. Code § 1-1189.2(b) as soon as possible.

Sincerely yours,

Steven DeGeorge  
Cochair, Steering Committee  
Government Contracts and  
Litigation Section  
District of Columbia Bar Association

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<sup>1</sup>The views expressed herein represent only those of the Section on Government Contracts of the District of Columbia Bar and not those of the Bar or its Board of Governors.

<sup>2</sup>D.C. Code § 1-1189.1 (a) (1).

<sup>3</sup>D.C. Code § 1-1189.1 (a) (3).

<sup>4</sup>D.C. Code § 1-1189.2 (a) (1).

<sup>5</sup>D.C. Code § 1-1189.1 (b).

<sup>6</sup>Decisions of the Board may be applied to the District of Columbia Court of Appeals, D.C. Code § 1-1189.5.