



# CONTRACT LAW DIVISION

Office of the Assistant General Counsel for Finance and Litigation



## Biweekly Report - Period Ending April 12, 1997

### Graphic Data, LLC v. U.S., No. 97-256C (COFC)

This is a new action in which Graphic Data, a perpetually frustrated bidder, seeks injunctive relief to prevent GPO from proceeding with performance of a contract award to News Printing Co. for the production of patent copies. A 4+-hour evidentiary hearing on the TRO was held which resulted in denial of any restraining order. A two-day trial is set for the third week in April. (Mark Langstein)

### Overseas PSCs

We were squarely faced for the first time with an issue of the State Department's handling of awards of overseas Personal Services Contracts (PSCs) on behalf of the US &FCS. State is the servicing agency for most overseas procurements on behalf of the US&FCS. Under State's regulations, the award of a PSC is treated as a hire pursuant to a vacancy announcement. Based on State's Foreign Acquisition Manual, there are no appeal rights for an unsuccessful candidate. If this type of acquisition is done by Commerce, it is treated as the procurement of services under the Federal Acquisition Regulation (FAR), with an unsuccessful offeror having a right to protest to the General Accounting Office.

### Empowerment Contracting

An Interagency meeting last week, including OVP, agreed that Commerce will prequalify contractors seeking an Empowerment Contracting preference. Although prequalification will not be contract-specific, there will be contract-specific preferences available for offerors that certify that they meet the Empowerment Contracting criteria. Commerce will also be responsible for instituting and implementing procedures for offerors wishing to contest an offeror's entitlement to an Empowerment Contracting preference. It was also decided that the preference will be in addition to any other preference which the offeror may be entitled to. FAR Regulations are now in the process of being finalized and will shortly be filed in the Federal Register. The proposed regulations, and DoC's conforming Guidelines, do not require that any work on the contract for which the preference is sought be performed in an eligible area. In related events, we also assisted with testimony by the SBA Administrator on the Hub-Zone bill with respect to issues raised by the Empowerment Contracting initiative. Markup on the Hub-Zone bill is being expedited and the Department may be requested to assist in that process. Alden Abbott, Joe Levine, Jerry Walz and Mark Langstein all had a hand in the pie.

An unsuccessful candidate for a PSC at the US&FCS Post in Dusseldorf, Germany, has requested an appeal of the decision not to award him a contract and directed it to US &FCS. We have advised US &FCS that the candidate should be directed to the State Department personnel office in Germany, as it was that office that made the award under its regulations. Consultations with State Department procurement counsel have resulted in a recommendation by State's counsel to have the State Department personnel officer handle the case.

We have recommended to the DAS for the Office of International Operations of US &FCS that upper management procurement officials at the two agencies should consult to avoid this type of conflict in the future. Ken Lechter is advising.

### APEC Trade Tariff Database

We reviewed the latest draft of this agreement and still had several thoughts as to how it could be improved. We spoke with the Australian team which is negotiating the agreement with FedEx and discussed our mutual concerns and ideas. A new draft should be ready soon. Mark Langstein is advising.

### **Actions Completed/Received during Period**

	From 3/30/97	To 4/12/97
	Received	Completed
Franchise	1	1
NIST	1	1
NOAA	10	13
PTO	3	3
<b>Total</b>	<b>15</b>	<b>Total 18</b>

### **Contract Law Division—Client Workload Period Ending 04/12/97**

