



# CONTRACT LAW DIVISION

Office of Assistant General Counsel for Finance and Litigation



Biweekly Report—Period Ending June 05, 1999

## **Arthur E. Lees v. DoC—GAO Nos. B-282281.3; B-282281; B-281954.3, B-281954.2**

GAO has dismissed the various bid protests and requests for reconsideration of Arthur E. Lees, an applicant for a Commercial Representative position with the U.S. Foreign Commercial Service in China. GAO agreed with the Department's position that GAO lacked jurisdiction to rule on these bid protests as the subject matter of the protests was essentially a personal services employment contract rather than a procurement contract. Since 1983, ITA's appropriations language has provided for "the employment of Americans and aliens by contract for services abroad." All pending protests were therefore dismissed. This ruling should prevent further similar filings by Mr. Lees. (Lisa J. Obayashi)

### **ADR**

Amy Crotts and Catherine Shea met with Nancy Barrere in the Office of Acquisition Management to discuss instituting an ADR procedure for contract administration. ADR is viewed as another tool for the contracting officer to use in administering a contract. We discussed first steps such as ensuring a pool of neutrals is available so contracting officers have ready-access to neutrals when a dispute arises. CLD will prepare a draft policy and draft procedures for OAM to review and consider for implementation at DOC.

### **CAMS**

We are advising the Contracting Officer as to whether the Department can recover monies that Anderson & Associates has seemingly overcharged in performing the Core Financial System contract. We are also advising as to whether Anderson's actions in this regard may constitute actionable fraud. (Mark Langstein & Amy Kiger Crotts)

## **DEBCON v. DOC (GSBCA No. 13923-COM)**

The Board held a status conference with the parties on Thursday, May 27<sup>th</sup>. The parties revised the hearing schedule and have agreed upon the week of October 18<sup>th</sup> for the hearing in Las Vegas. We have advised Appellant that additional documents are available for their review; however, we still have not received Appellant's written discovery request. Additional depositions are scheduled for the second week in June in Houston, TX, and for the first week of July in Kansas City. (Mark Langstein and Amy Freeman) GWAC/IT/OAM

## **Irwin Jurkewicz v. DOC, GSBCA No. 14894-COM**

At the Board's request, appellant filed two statements on June 3 regarding recollection of events. As a result, respondent has requested limited discovery and submitted inquiries to appellant on June 8. Respondent has also begun initial interviews with EASC contracting and environmental officials and other contractors who participated in the removal of the building, for the purpose of preparing affidavits. (Terry H. Lee).

### **OAM/Comments/OFPP Policy Letters**

Provided comments on proposed OFPP Policy Letters 99-X and 99-1. OAM wanted counsel to review them in the context of the *Lutheran Church* decision issued in April 1998 by the D.C. Circuit Court of Appeals. The first policy letter deals with promoting subcontracting opportunities for all types of small businesses, including development of subcontracting plans, incentives for contracting with small businesses, use of subcontracting in past performance considerations, etc. The second concerns guidelines for attaining statutory goals by executive agencies contracting with all types of small businesses. (Terry H. Lee)

### **CLD "Time to Complete"—4.3 Days**

#### **Actions by Contract Law Division during Period**

	From 5/23/99	To 6/5/99
Bureau	Received	Completed
CENSUS	1	1
NIST	2	2
NOAA	10	6
PTO	3	3
<b>Total</b>	<b>16</b>	<b>Total 12</b>

