



# CONTRACT LAW DIVISION

Office of the Assistant General Counsel for Finance and Litigation



Biweekly Report—Period Ending August 30, 1997

## First Agency Level Protest

The first protest under the Department's Agency Level Protest procedures has been received. The protest arose from a solicitation at the Eastern Administrative Support Center (EASC). We will prepare a draft decision for the deciding official, NOAA's Richard de la Menardiere. Edward J. Weber, who joined our staff this week, has the matter.

## Med-National, Inc. v. DOC,—GAO B-277430

GAO convened a hearing in this matter in which the Protester challenges NOAA's determination that its proposal was late and its consequent exclusion from consideration. The purpose of the hearing was to ferret out facts about the hand-delivery of the proposal. Cecilia R. Jones is in the process of preparing post-hearing comments due Thursday.

## Claim of Dale G. Lillie (DGL Consulting Services)

Edward Weber is evaluating this \$112,112.78 claim (including lost wages and miscellaneous fees and expenses) filed by this National Weather Service ("NWS") retiree for consulting services he allegedly performed for NWS's Red River Forecast Center in Tulsa, Oklahoma. Given that Claimant's attorney does not identify a contract number or award date, the claim poses a significant threshold questions of contract formation between NWS and Mr. Lillie.

## Gem Engineering v. Dept. of Commerce, GSBCA No. 13566-COM

We defended depositions of the Contracting Officer and the COTR in this claim for costs associated with alleged constructive acceleration of construction of the Mount Holly, NJ Weather Forecast Office. We also began preliminary preparation of our presentation for the ADR session scheduled for mid-November. Catherine Shea and Mark Langstein have the matter.

## Miller Act Question

CASC has requested advice regarding whether contracting officers can require performance and bid bonds for construction procurements with an estimated value greater than \$25,000 but less than \$100,000, notwithstanding the fact that the Miller Act is inapplicable to simplified acquisitions. Amy Freeman is advising.

## The Austin Company v. DOC—GSBCA 14271-ADR

In furtherance of the Department's Alternative Dispute Resolution (ADR) policy and the contract's "partnering" agreement, DOC and the Contractor have agreed to submit several disputes for a non-binding early neutral evaluation to an Administrative Judge at the Board. The issues generally involve the question of compensable delays based upon a significant disagreement of the appropriate critical path for this \$50 Million construction project. The parties have submitted a joint statement of issues, and each side has provided a short statement of its position as to these issues, with supporting documentation. The parties have agreed that each side would make a 2-3 hour narrative presentation of its position, and be limited to two witnesses each. The proceeding is scheduled for September 10, 1997, and the Board has indicated that it would bring the principles back on September 11, 1997, to provide its evaluation. It is the belief of both parties that, with this evaluation, they will better be able to successfully negotiate these disputes, without the necessity for formal litigation. Ken Lechter is advising.

