

**DEPARTMENT OF THE NAVY  
OFFICE OF THE ASSISTANT SECRETARY  
RESEARCH, DEVELOPMENT AND ACQUISITION  
1000 NAVY PENTAGON  
WASHINGTON DC 20350-1000**

**MAR 10 2003**

MEMORANDUM FOR PROGRAM EXECUTIVE OFFICERS  
DIRECT REPORTING PROGRAM MANAGERS  
COMMANDERS OF THE SYSTEMS COMMANDS

Subj: PROTESTS, CLAIMS AND ALTERNATE DISPUTE RESOLUTION (ADR) AS  
FACTORS IN PAST PERFORMANCE AND SOURCE SELECTION DECISIONS

Encl: (1) D, DPAP memorandum of December 16, 2002 w/attachment

The Director, Defense Procurement and Acquisition Policy has forwarded as the attachment to enclosure (1), a memorandum from the Administrator, Office of Federal Procurement Policy. This memorandum states that:

1. Contractors may not be given "downgraded" past performance evaluations for availing themselves of their rights by filing protests and claims or for deciding not to use ADR.
2. Contractors may not be given more "positive" past performance evaluations for refraining from filing protests and claims or for agreeing to use ADR.

Please ensure that this policy is distributed to all members of your organizations who are involved in source selections and past performance decisions.

M. F. Jaggard  
Chief of Staff/Policy  
for DASN(ACQ)

OFFICE OF THE UNDER SECRETARY OF DEFENSE  
3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

16 DEC  
2002

ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

MEMORANDUM FOR DIRECTORS, DEFENSE AGENCIES  
ACTING DEPUTY ASSISTANT SECRETARY OF THE  
ARMY (POLICY AND PROCUREMENT), ASA(AL&T)  
DEPUTY FOR ACQUISITION AND BUSINESS  
MANAGEMENT, ASN(RD&A)ABM  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING), SAF/AQC  
EXECUTIVE DIRECTOR, LOGISTICS POLICY &  
ACQUISITION MANAGEMENT (DLA)

SUBJECT: Protests, Claims, and Alternative Dispute Resolution (ADR) as Factors in  
Past Performance and Source Selection Decisions

I am forwarding a memorandum issued by the Administrator, Office of Federal Procurement Policy. The memorandum states that the filing of protests or claims or the use of ADR must not be considered in either past performance evaluations or source selection decisions. We should continue to work with our contractors to avoid or minimize unnecessary protests and claims and encourage the use of ADR, where appropriate, while not discouraging contractors from availing themselves of the rights provided to them by law.

I emphasize that acquisition personnel, especially source selection officials, shall not: (1) downgrade contractors' past performance evaluations for availing themselves of their rights by filing protests and claims or for deciding not to use *ADR*; or (2) rate contractors more positively on past performance evaluations for refraining from filing protests and claims or for agreeing to use *ADR*.

Please make wide distribution *of* this memorandum. My point of contact for this action is [REDACTED] 703-697-8334 or via e-mail [REDACTED]

Deidre A. Lee  
Director, Defense Procurement  
& Acquisition Policy

Attachment:  
As stated

Subj: PROTESTS, CLAIMS AND ALTERNATE DISPUTE RESOLUTION (ADR) AS  
FACTORS IN PAST PERFORMANCE AND SOURCE SELECTION DECISIONS

Copy to:

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EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL  
PROCUREMENT POLICY

April 1, 2002

MEMORANDUM FOR AGENCY SENIOR PROCUREMENT EXECUTIVES

FROM: Angela B. Styles  
Administrator

SUBJECT: Protests, Claims, and Alternative Dispute Resolution (ADR) as Factors in  
Past Performance and Source Selection Decisions

While many agencies and contractors have successfully resolved contentious contract issues by effectively using a wide range of dispute resolution techniques, concerns have arisen regarding the consideration federal agencies give contractor protests, claims, and ADR practices in past performance evaluations and source selection decisions. For the reasons stated below, the filing of protests, the filing of claims, or the use of ADR, must not be considered by an agency in either past performance evaluations or source selection decisions.

Federal agencies should continue to work- with contractors to avoid or minimize unnecessary protests and claims, and encourage the use of ADR, where appropriate. At the same time, contractors should feel free to avail themselves of the rights provided to them by law, Accordingly, please emphasize to your agency's acquisition personnel, especially source selection officials, that.,

1. Contractors may not be given "downgraded" past **performance evaluations** for availing themselves of their rights by filing protests and claims or for deciding not to use ADR; and
2. Contractors may not be given more "positive" past performance evaluations for refraining from filing protests and claims or for agreeing to use ADR.

I appreciate your assistance in ensuring that this memorandum is distributed to the appropriate personnel in your agency.

cc: Agency General Counsels