



DEPARTMENT OF VETERANS AFFAIRS
DEPUTY ASSISTANT SECRETARY FOR ACQUISITION AND MATERIEL
MANAGEMENT
WASHINGTON, DC 20420

IL 049-02-9
May 6, 2002

OFFICE OF ACQUISITION AND MATERIEL MANAGEMENT INFORMATION LETTER

TO: Under Secretaries for Health, Benefits, and Memorial Affairs; Chief Facilities Management Officer, Office of Facilities Management; Veterans Integrated Service Network Directors; Directors, VA Medical Center Activities, Domiciliary, Outpatient Clinics, Medical and Regional Office Centers, and Regional Offices; Directors, Denver Distribution Center, Austin Automation Center, Records Management Center, VBA Benefits Delivery Centers, and the VA Health Administration Center; and the Executive Director and Chief Operating Officer, VA National Acquisition Center

ATTN: Head of the Contracting Activity
All VA Contracting Officers

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

1. Office of Federal Procurement Policy (OFPP) Administrator Angela B. Styles, by letter dated April 1, 2002 (enclosed), directed Federal agencies to disregard the filing of protests, the filing of claims, or the use of ADR as factors in either past performance evaluations or source selection decisions.
2. Procurement personnel should continue to work with contractors to avoid or minimize unnecessary protests claims, and encourage the use of ADR, where appropriate. Acquisition personnel, especially source selection officials, must be cognizant that:
 - a. 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

Contractors may not be given more "positive" past performance for refraining from filing protests and claims or for agreeing to use ADR.

2.
IL 049-02-9

2. Please direct any questions regarding this information letter to Derek Underwood, Acquisition Policy Division (049A5A), at (202) 273-5044.

/s/David S. Derr
Associate Deputy Assistant Secretary
for Acquisitions

Distribution: RPC 7029

Enclosure



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

April 1, 2002

MEMORANDUM FOR AGENCY SENIOR PROCUREMENT EXECUTIVES

FROM: /s/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