OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

16 DEC 2002

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 Phil Degen, 703-697-8334 or via e-mail: philip.degen@osd.mil.

Deidre A. Lee
Director, Defense Procurement
& Acquisition Policy

Attachment:
As stated

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