



Acquisition & Assistance Policy Directive (AAPD)

From the Office of the Director, Procurement

Issued: June 5, 2002

AAPD 02-08

Consideration of Protests, Claims, and Alternative Disputes Resolutions in Past Performance Evaluation

Subject Category: Acquisition Management (AM);
Assistance (A)
Type: New Policy/Procedure

AAPDs provide information of significance to all agency personnel and partners involved in the Acquisition and Assistance process. Information includes (but is not limited to): advance notification of changes in acquisition or assistance regulations; reminders; procedures; and general information. Also, AAPDs may be used to implement new requirements on short-notice, pending formal amendment of acquisition or assistance regulations.

AAPDs are **EFFECTIVE AS OF THE ISSUED DATE** unless otherwise noted in the guidance below; the directives remain in effect until this office issues a notice of cancellation.

This AAPD: Is New Replaces/ Amends
CIB/AAPD No: _____

Precedes change to: AIDAR Part(s) _____ Appendix _____
 US AID Automated Directives System (ADS) Chapter _____
 Code of Federal Regulations _____
 Other _____
 No change to regulations

Applicable to: Existing awards; Modification **NOT** required:
 Effective immediately
 No later than _____
 As noted in guidance below
 RFPs/RFAs issued on or after the effective date of this AAPD; all other Pending Awards, i.e., 8(a), sole source...
 Other or N/A _____

New Provision/Clause Provided Herein: Yes; Scheduled update to Prodoc: _____
 No

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AAPD 02-08 Consideration of Protests, Claims, and Alternative Disputes Resolutions in Past Performance Evaluation

PURPOSE:

The purpose of this AAPD is to establish policy to ensure that contracting officers (COs) do not consider the filing of protests, filing of claims, or the use of Alternative Dispute Resolution (ADR) in past performance evaluations or source selection decisions.

BACKGROUND:

The Office of Federal Procurement Policy (OFPP) has requested that we emphasize the following point with respect to the use of past performance information. We anticipate that it will address the point in a future FAR Circular.

GUIDANCE:

NEW POLICY: The filing of protests, filing of claims, or the use of ADR must not be considered in the evaluation of past performance or source selection decisions under FAR Parts 15 and 42, i.e.:

1. Offerors and 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. Offerors and contractors may not be given more "positive" performance evaluations for refraining from filing protests and claims or for agreeing to use ADR.

USAID personnel should continue to work with offerors and contractors to avoid or minimize unnecessary protests and claims and encourage the use of ADR, where appropriate. However, at the same time offerors and contractors should feel free to avail themselves of the rights provided them by law.

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