

could lead to the debarment, suspension, or ineligibility of a supplier. Unacceptable conduct or business practices include, but are not limited to:

- (1) Marginal or dilatory contract performance;
- (2) Failure to deliver on promises made in the course of dealings with the Postal Service;
- (3) Providing false or misleading information as to financial condition, ability to perform, or other material matters, including any aspect of performance on a contract; and
- (4) Engaging in other questionable or unprofessional conduct or business practices.

(b) *Notice.* If the Postal Service elects to decline to accept or consider proposals from a person or organization, the vice president of Supply Management, or his or her designee, will provide a written notice to the person or organization explaining:

- (1) The reasons for the decision;
- (2) The effective date of the decision;
- (3) The scope of the decision;
- (4) The duration of the decision (this may be limited to a specified length of time or may extend indefinitely); and
- (5) The supplier's right to contest the decision.

(c) *Contesting Decisions.* If a person or organization believes the decision not to accept or consider proposals is not merited, it may contest the matter in accordance with the ombudsman and disagreement-resolution procedures contained in this part, seek to resolve the matter by agreement through alternative dispute resolution, or both. The Postal Service may reconsider the matter and, if warranted, rescind or modify the decision to decline to accept or consider proposals.

§ 601.107 Initial disagreement resolution.

It is the policy of the Postal Service and in the interest of suppliers to resolve potential disagreements by mutual agreement at the contracting officer or appropriate management level. Therefore, all disputes, protests, claims, disagreements, or demands of whatsoever nature (hereinafter "disagreements") against the Postal Service arising in connection with the purchasing process, except claims that

arise pursuant to a contract under the Contract Disputes Act or claims concerning debarment, suspension, or ineligibility under § 601.113, must be lodged with the responsible contracting officer for resolution within 10 days of the date the disagreement arose. If the matter is not resolved within 10 days following the lodging of the dispute, the disagreement may be lodged with the Ombudsman as described in § 601.108. Alternative dispute resolution (ADR) procedures may be used, if agreed to by both parties. The Postal Service supports and encourages the use of ADR as an effective way to understand, address, and resolve disagreements and conflicts. A person or organization disagreeing with a Postal Service decision and the Postal Service contracting officer must consider the use of ADR to resolve a particular purchasing disagreement, regardless of the nature of the disagreement or when it occurs during the purchasing process. ADR methods include informal negotiation, mediation by a neutral third party, and any other agreed-upon method.

§ 601.108 Ombudsman disagreement resolution.

(a) *Policy.* From time to time, disagreements may arise between suppliers, potential suppliers, and the Postal Service regarding awards of contracts and related matters that are not resolved as set forth in § 601.107. When a disagreement under § 601.107 is not resolved within ten calendar days of when it was lodged with the contracting officer, then the disagreement may be lodged with the ombudsman established in this part for final resolution. The Postal Service desires to resolve all such disagreements quickly and inexpensively in keeping with the regulations in this part, 39 U.S.C. 410, and all other applicable public laws enacted by Congress. In resolving disagreements, non-Postal Service procurement rules or regulations will not govern.

(b) *Scope and Applicability.* In order to expeditiously resolve disagreements that are not resolved at the contracting officer or appropriate management level, to reduce litigation expenses, inconvenience, and other costs

for all parties, and to facilitate successful business relationships with Postal Service suppliers, the supplier community, and other persons, the following procedure is established as the sole and exclusive means to resolve disagreements arising in connection with awards of contracts for the purchase of property (excluding real property) or services and all related matters. All disputes, protests, claims, disagreements, or demands of whatsoever nature (hereinafter “disagreements”) against the Postal Service arising in connection with the purchasing process, except claims that arise pursuant to a contract under the Contract Disputes Act or claims concerning debarment, suspension, or ineligibility under §601.113, will be lodged with and resolved, with finality, by the ombudsman under and in accordance with the sole and exclusive procedure established in this section.

(c) A disagreement may be lodged with the ombudsman by an organization or a person with respect to the Postal Service’s decision not to accept or consider business proposals or the award of a contract.

(d) The disagreement must be lodged in writing and must state the factual circumstances relating to it, the remedy sought, and the rationale for the disagreement. Counsel is not required, but may be retained to assist in the disagreement process. The person or organization lodging the disagreement must indicate in the disagreement whether it is willing to attempt to resolve the matter through informal discussions, mediation, or another means of ADR.

(e) A disagreement must be lodged with the ombudsman within twenty calendar days after the time it was presented in §601.107. The ombudsman may grant an extension of time to lodge a disagreement or to provide supporting information when warranted. Any request for an extension must set forth the reasons for the request, be made in writing, and be delivered to the ombudsman on or before the time to lodge a disagreement lapses. The address of the ombudsman is: Attn: Ombudsman, United States Postal Service Headquarters, 475 L’Enfant Plaza, SW., Room 4110, Washington, DC 20260-6200.

(f) The ombudsman will promptly provide a copy of a disagreement to the contracting officer, who will promptly notify other interested persons (i.e., actual or prospective offerors whose direct economic interests would be affected by the award of, or failure to award, the contract). The ombudsman will consider a disagreement and any response by other interested persons and appropriate Postal Service officials within a time frame established by the ombudsman. The ombudsman may also meet individually or jointly with the person or organization lodging the disagreement, other interested persons, and/or Postal Service officials, and may undertake other activities in order to obtain materials, information, or advice that may help to resolve the disagreement. The person or organization lodging the disagreement, other interested persons, or Postal Service officials must promptly provide all relevant, nonprivileged materials and other information requested by the ombudsman. After obtaining such information, materials, and advice as may be needed, the ombudsman will promptly issue a decision in writing resolving a disagreement and will deliver the decision to the person or organization lodging the disagreement, other interested persons, and appropriate Postal Service officials. If confidential or privileged material is needed in order to reach a decision, the ombudsman will notify the appropriate party to provide such material to the ombudsman only. The confidential material will be held in confidence by the ombudsman and will be returned to the party upon request at the conclusion of the matter.

(g) In considering and in resolving a disagreement, the ombudsman will be guided by the regulations contained in this part and all applicable public laws enacted by Congress. Non-Postal Service procurement rules or regulations and revoked Postal Service regulations will not apply or be taken into account in resolving disagreements. Failure of any party to provide promptly requested information may be taken into account by the ombudsman in the decision.

(h) A decision of the ombudsman will be final and binding on the person or

organization lodging the disagreement, other interested persons, and the Postal Service. However, the person or organization that lodged the disagreement or another interested person may appeal the decision to a federal court with jurisdiction over such claims, but only on the grounds that the decision:

(1) Was procured by fraud or other criminal misconduct; or

(2) Was obtained in violation of the regulations contained in this part or an applicable public law enacted by Congress.

(i) It is intended that this procedure generally will resolve disagreements within approximately 30 days after the ombudsman receives the disagreement. The time may be shortened or lengthened depending on the complexity of the issues and other relevant considerations.

§ 601.109 Contract claims and disputes.

(a) *General.* This section implements the Contract Disputes Act of 1978, as amended (41 U.S.C. 601–613).

(b) *Policy.* It is Postal Service policy to resolve contractual claims and disputes by mutual agreement at the level of an authorized contracting officer whenever possible. In addition, the Postal Service supports and encourages the use of alternative dispute resolution as an effective way to understand, address, and resolve conflicts with suppliers. Efforts to resolve differences should be made before the issuance of a final decision on a claim, and even when the supplier does not agree to use ADR, the contracting officer should consider holding informal discussions between the parties in order to resolve the conflict before the issuance of a final decision.

(c) *Contractor Claim Initiation.* Supplier claims must be submitted in writing to the contracting officer for final decision. The contracting officer must document the contract file with evidence of the date of receipt of any submission that the contracting officer determines is a claim. Supplier claims must be submitted within 6 years after accrual of a claim unless the parties agreed to a shorter time period. The 6-year time period does not apply to contracts awarded prior to October 1, 1995.

(d) *Postal Service Claim Initiation.* The contracting officer must issue a written decision on any Postal Service claim against a supplier, within 6 years after accrual of a claim, unless the parties agreed in writing to a shorter time period. The 6-year time period does not apply to contracts awarded prior to October 1, 1995, or to a Postal Service claim based on a supplier claim involving fraud.

(e) *Certified Claims.* Each supplier claim exceeding \$100,000 must be accompanied by a certification in accordance with the supplier's contract.

(f) When the contracting officer determines that the supplier is unable to support any part of the claim and there is evidence or reason to believe the inability is attributable to either misrepresentation of fact or fraud on the supplier's part, the contracting officer must deny that part of the claim and refer the matter to the Office of Inspector General.

(g) *Decision and Appeal—(1) Contracting Officer's Authority.* A contracting officer is authorized to decide or settle all claims arising under or relating to a contract subject to the Contract Disputes Act, except for:

(i) Claims or disputes for penalties or forfeitures prescribed by statutes or regulation that a Federal agency administers; or

(ii) Claims involving fraud.

(2) *Contracting Officer's Decision.* The contracting officer must review the facts pertinent to the claim, obtain assistance from assigned counsel and other advisors, and issue a final decision in writing. The decision must include a description of the claim or dispute with references to the pertinent contract provisions, a statement of the factual areas of agreement and disagreement, and a statement of the contracting officer's decision with supporting rationale.

(3) *Insufficient Information.* When the contracting officer cannot issue a decision because the supplier has not provided sufficient information, the contracting officer must promptly request the required information. Further failure to provide the requested information is an adequate reason to deny the claim.