

Virginia Interagency ADR Council Pilot Presentations

Procurement and Contractual Disputes

Department of General Services

June 29, 2005

Pilot Overview

■ Goals:

- Promotes agency/contractor partnership
- Less formal process resulting in faster and less costly resolution
- Less confrontational
- Parties retain control & outcome

■ Participants:

- All State Agencies that follow the *DPS Agency Procurement and Surplus Property Manual (APSPM)*
- Vendor Community that follow the *DPS Vendors Manual*

Steps Taken

- DPS Research – Local Governments, Virginia Association of Governmental Purchasing, National Institute of Governmental Purchasing, Federal Acquisition Regulation
- Discussions with VITA
- Consultation with OAG
- Policy developed and approved by DPS Policy Committee and Director
- Policy incorporated into the *APSPM* – July 2004 – applicable to non-technology goods/services and non-professional services contracts
- Agencies notified and provided instruction on use of DPS ADR Policy:
 - DPS website
 - DPS statewide procurement forum – December 2004
 - Added to Virginia Contracting Officer curriculum

Supporting Conditions & Challenges

- Supporting Conditions & Impact
 - Prior to DPS Policy, vendors only option to challenge agency contractual dispute decision was legal action – costly for all involved
 - Develop partnerships between agencies and their vendors
 - Vendors reluctant to challenge agencies in court – concerned about ramifications

- Challenges & Solutions
 - Awareness of policy
 - Change the business practices of vendors and agency buyers
 - Education/Training

Implementing the New ADR Process

■ How It Works

- Agency denies a contractor's claim
- Contractor decides to challenge claim
- Parties encouraged to use ADR
 - » Contractor gives written notice to agency purchasing office requesting ADR process to resolve issue
 - » Each party appoints senior management official not previously involved in the transaction to negotiate on their behalf
 - » Each party shall furnish to the other party all non-privileged documents and information with respect to the dispute that either party believes to be appropriate and germane
 - » Informal – attorneys excluded
 - » Use of facilitator recommended
 - » Resolution agreement must be in writing and signed by authorized representatives of both parties
 - » Any compensation paid to facilitator shall be shared equally by the two parties

■ Roll Out to Stakeholders

- DPS Procurement Forum – December 2004
 - » Buyer and Vendor workshops
- *APSPM* and Vendor Manual
- DPS Procurement Forum – November 2005

Results Expected to Produce

- Better:
 - Communications between contractors and agencies
 - Less confrontational
 - Parties retain control and outcome

- Faster:
 - Reduces time to resolve contractual dispute

- Cheaper:
 - ADR less expensive than legal/court alternative

Lessons Learned

- Different way of thinking – agency buyers and contractors need “Interest-Based Negotiation” training
- Improved agency/contractor relations
- It’s still early in the implementation process – but each ADR endeavor is a potential “Win/Win” solution