



Department of Energy
Acquisition Regulation

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ACQUISITION LETTER

AUTHORITY

This Acquisition Letter (AL) is issued by the Procurement Executive pursuant to a delegation from the Secretary and under the authority of the Department of Energy Acquisition Regulation (DEAR) subsection 901.301-70.

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CONTENTS

CITATION

DEAR Part 933

TITLE

Protests, Disputes, and Appeals

- I. Purpose. This AL establishes policy and provides guidance for the use of alternative dispute resolution techniques in connection with disputes that arise under the Contract Disputes Act (CDA) of 1978, 41 U.S.C. sections 601-613.

This AL revision deletes references to "district court" which were incorrectly cited in paragraph four of the Policy section.

- II. Background. Alternative Dispute Resolution (ADR) refers to a range of procedures intended to resolve disputes at less cost, more quickly, and with greater satisfaction for the parties involved than is possible through formal litigation. The techniques are flexible and adaptable to the particularities of each individual case and permit the parties to take into account their respective litigation risks. The employment of ADR is a consensual matter and cannot be instituted without the agreement of both the Department of Energy (DOE) and the contractor. Additional detailed guidance concerning ADR will be provided in a guide being prepared at this time.

- III. Policy. It is DOE policy to make maximum use of ADR as an alternative to formal litigation where it appears such an approach will facilitate dispute resolution. The goal is to resolve the dispute at the earliest stage feasible, preferably before the contracting officer's final decision, by the fastest and least expensive method possible and at the lowest appropriate organizational level. A preference for the early application of ADR is reflected at Federal Acquisition Regulation (FAR) 33.204, which states, "[i]t is the Government's policy to try to resolve all contractual issues by mutual agreement at the contracting officer's level, without litigation."

Parties, with assistance of a neutral, complete whatever preparation

is provided for in agreement, such as discovery and exchange of position papers. Consumes bulk of the time to complete the mini-trial.

- (2) The hearing stage. Representatives present their respective positions to the officials. Each representative is given a specific amount of time within which to make the presentation. How that time is utilized is solely at the discretion of the representative. There may also be an opportunity for rebuttal and a questions and answer period for the officials. This stage usually takes 1 to 3 days.
- (3) The posthearing discussion stage. Officials meet to discuss resolving the dispute. The mini-trial agreement should establish a time limit within which officials either agree to settle the matter or agree to resume the underlying litigation. These discussions are settlement negotiations and, as such, may not be used by either party in subsequent litigation as an admission of liability or willingness to agree on any aspect of settlement.

The agreement may provide for services of a neutral advisor. A potential source of a neutral advisor is the EBCA, which has substantive experience, established reputation for objectivity and cost effectiveness. Other federal agencies can provide neutrals at minimum cost. It should be noted that the employment of a neutral advisor from the private sector will necessitate cost-expenditure by DOE.

b. Mediation. Mediation is a process in which the disputing parties select a neutral third party to assist them in reaching a settlement of the dispute. The process is private, voluntary, informal and nonbinding. It provides an opportunity to explore a wide range of potential solutions and to address interests that may be outside the scope of the stated controversy or could not be addressed by judicial action. The mediator has no power to impose a settlement. The function of the mediator is determined in part by the desires of the parties and in part by the attitude of the individual chosen to mediate. Some mediators propose settlement terms and attempt to persuade parties to make concessions. Other mediators work only with party-generated proposals and try to help parties realistically assess their options. Some mediators work primarily in joint sessions with all parties present while others make extensive use of private caucuses. At a minimum, most mediators will provide an environment in which the parties can communicate constructively with each