U.S. DEPARTMENT of ENERGY

Alternative Dispute Resolution Guide

Version 2.0

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The following guidance is provided for all contract claims pursuant to the CDA or appeals before the Civilian Board of Contract Appeals. This guide offers information about resolving contract claims and appeals, whether it is before or after formal legal action has begun. Conflict is inevitable, and disputes are bound to arise when managing complex acquisitions and interpreting extensive contracts. How we choose to handle those disputes dictates whether they become a costly drain on resources or a collaborative opportunity to solve problems.

Under Federal Acquisition Regulation (FAR) Subpart 33.214 and Department of Energy Acquisition Regulation (DEAR) Part 933, the Department of Energy (DOE) is strongly committed to resolving contract disputes at the lowest level possible.

What are the Benefits of ADR?

You Control the Outcome: In traditional litigation, a third-party judge or board with limited operational knowledge of the project will ultimately impose a binding, "win-lose" decision. (Or, in many cases, a “lose-lose” decision.) In ADR, nothing is left to chance or the whims of a third party. Instead, the Department and the contractor decide *together* what the best way to resolve the dispute is.

Creative and Flexible Solutions: ADR empowers the Department and the contractor to craft tailored, business-oriented remedies. Because the parties govern the resolution, they can agree to terms that a court simply lacks the authority to mandate—such as modifying future performance schedules, restructuring payment milestones, or adjusting scopes of work to benefit both parties.

Efficient and Cost-Effective: Traditional litigation can drag on for years, leaving a cloud of uncertainty over project execution. ADR processes can often be scheduled, conducted, and concluded in a matter of weeks. Also, traditional litigation is incredibly expensive in both money and staff hours. Both the Department and the contractor will have to incur extensive legal fees and costs, as well as the drain on employees. Attorneys, project managers, engineers, and the contracting officer (“CO") will almost certainly spend hundreds of hours on litigation, rather than advancing the DOE mission. ADR provides the opportunity to reduce or eliminate these inefficiencies and costs.

Preserves Relationships: DOE's mission-critical work relies heavily on long-term relationships with contractors. Traditional litigation is inherently adversarial and can permanently damage collaborative working relationships. ADR fosters a cooperative environment that keeps communication channels open and constructive. In fact, resolving disputes in an informal and professional manner often creates a *stronger* relationship with increased trust, better mutual understanding, and greater confidence in the partnership.

Voluntary and Confidential: Both DOE and the contractor must voluntarily agree to participate. Nobody is forced to participate in any ADR process they do not want to. Parties must be invested in the process and must participate of their own volition and in good faith. Confidentiality is fundamental to ADR. Per the Administrative Dispute Resolution Act of 1996 (5 USC § 574), the CFC rules (RCFC 16(f)(2)), and the CBCA rules (48 CFR 6101.54(c)), all communications, briefs, and settlement offers made during the ADR process are strictly confidential. This allows both sides to speak candidly without fearing that their words will be used against them in any future proceeding.

Types of ADR

Direct Negotiation: A direct negotiation is simply where the parties informally attempt to work out disagreement among themselves. This generally is as simple as an unstructured phone call or email exchange between the CO and the contractor.

Mediation: In mediation, a neutral third party helps the CO and the contractor attempt to reach a settlement. Mediation is a confidential, private, voluntary, informal, and non-binding process that allows for exploring various solutions and interests outside the scope of legal action. The mediator does not impose a settlement but facilitates communication and helps parties overcome obstacles. Mediation provides the parties with the opportunity to generate their own solutions and have greater control over the outcome of the matter.

Other ADR processes are available to the parties, but are seldom-used in the federal contract claim context. These include, but are not limited to, Early Neutral Evaluation, Mini-Trials, Outcome Prediction Assistance, and Non-Binding Arbitration.

Where can I get ADR assistance?

DOE ADR Office: The DOE Alternative Dispute Resolution Office (the ADR Office) serves as a resource to explore efficient and cost-effective means of managing and resolving conflicts and disputes. The ADR Office offers mediation and consultations regarding contract claims, and their services are confidential, informal, voluntary, and free for all federal employees and contractors. To learn more or to schedule a confidential consultation, please contact the ADR Office:
ADROffice@hq.doe.gov
202-586-4002
https://www.energy.gov/ADR

CBCA ADR: Parties may also request ADR through the CBCA for both existing appeals and pre-claim or pre-final decision disputes. The CBCA judges serve as neutrals for CBCA ADR. Parties may jointly request ADR in a written document addressed to the Board's Chair via the CBCA's electronic docketing system or at cbca.efile@cbca.gov. For more information, go to https://www.cbca.gov/adr/using.html.

Private Third-Party Neutral: At their election, the parties may select any qualified individual to serve as a third-party neutral.