

APD ALERT



ESTABLISHING GUIDELINES FOR AN ALTERNATE DISPUTE RESOLUTION (ADR) CAPABILITY IN REE FOR PROCUREMENT

BACKGROUND

Alternative Dispute Resolution (ADR) is any procedure or combination of procedures voluntarily used to resolve (procurement) issues in controversy, without the need to resort to litigation. These procedures may include such actions as fact-finding, negotiation, facilitation, minitrials, mediation, or arbitration. FAR Part 33 contains policies and procedures concerning the processing of contract disputes and appeals; specifically FAR 33.204 encourages agencies to use ADR procedures to the maximum extent practicable.

These ADR procedures are commonly referred to as three main categories: mediation, arbitration, and partnering. The categories are explained as follows:

Mediation – A type of ADR in which a neutral third party helps to resolve a dispute. The mediator does not have the authority to impose a decision on either party. This third party could be a Contract Review Board, Procurement Analyst, or another Contracting Officer. When and if a satisfactory resolution is not reached, the parties can still pursue litigation.

Arbitration – Is when the parties agree to abide by the decision of the arbitrator. The arbitrator is selected directly by the parties or is chosen in accordance with the terms of the contract. When the parties elect to use arbitration, they agree to be bound by the decision of the arbitrator.

Partnering – Occurs when contracting parties meet after contract award has been made, but before work has begun on a project, to identify expectations and to set goals. These meetings usually take the form of one to two-day workshops held in neutral facilities. Partnering agreements may be agreed upon when they are believed to be beneficial to the completion of the procurement.

Contractors are required to provide the certification specified in FAR 33.207(c) when submitting any claim where an ADR technique is elected to handle a dispute.

POLICY GUIDANCE

REE policy requires Contracting Officers to try and resolve contractual issues in controversy by mutual agreement at the Contracting Officer's level. Although it is recognized that not all disagreements between the Government and private sector can be resolved through ADR, it is highly encouraged that ADR procedures be used to the maximum extent practicable.

ADR has generally been well received throughout the Government and is supported within the private sector. Using ADR as an optional forum for dispute resolution has the potential to:

- Settle issues simply and quickly.
- Reduce confrontations by allowing parties to work out mutually agreeable solutions.
- Develop partnering with contractors to prevent disputes by forming non-adversarial relationships.
- Increase productivity because both parties can focus more attention and resources on getting the job done, rather than resolving disputes.

ACTION REQUIRED BY REE

REE Contracting Officers must become familiar with FAR Part 33 guidance concerning ADR procedures and utilize them to the maximum extent practicable when ADR is appropriate.

APD POINT OF CONTACT

If you have any questions regarding Alternate Dispute Resolution (ADR), please contact the Acquisition Programs and Oversight Branch (APOB), on 301-504-1725, or via e-mail at APOB@ars.usda.gov.

ISSUE DATE: MAY 2011

APD ALERT: 2011-23