



ARMED SERVICES BOARD OF CONTRACT APPEALS
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**NOTICE REGARDING ALTERNATIVE METHODS OF
DISPUTE RESOLUTION**

The Contract Disputes Act, 41 U.S.C. § 7105, states that boards of contract appeals "shall ... to the fullest extent practicable provide informal, expeditious, and inexpensive resolution of disputes[.]" Resolution of a dispute at the earliest stage feasible, by the fastest and least expensive method possible, benefits both parties. To that end, the Board suggests that the parties consider Alternative Disputes Resolution (ADR) procedures.

The ADR methods described in this Notice are intended to suggest techniques which have worked in the past. Any method which brings the parties together in settlement, or partial settlement, of their disputes is a good method. The ADR methods listed are not intended to preclude the parties' use of other ADR techniques which do not require the Board's participation, such as settlement negotiations, fact finding conferences or procedures, mediation, or minitrials not involving use of the Board's personnel. The ADR methods described below are designed to supplement existing "extrajudicial" settlement techniques, not to replace them. Any method, or combination of methods, including one which will result in a binding decision, may be selected by the parties without regard to the dollar amount in dispute.

Requests to the Board to utilize ADR procedures must be made jointly by the parties. If an ADR method involving the Board's participation is requested by the parties, the presiding administrative judge or member of the Board's legal staff will forward the request to the Board's Chairman for consideration. Unilateral requests or motions seeking ADR will not be considered. The presiding administrative judge or member of the Board's legal staff may also schedule a conference to explore the desirability and selection of an ADR method. If a non-binding ADR method involving the Board's participation is requested and approved by the Chairman, a settlement judge or other neutral advisor will be appointed. Usually the person appointed will be an administrative judge or hearing examiner employed by the Board.

If a non-binding ADR method fails to resolve the dispute, the appeal will be restored to the active docket for processing under the Board's Rules. To facilitate full, frank and open discussion and presentations, any settlement judge or neutral advisor who has participated in a non-binding ADR procedure which has failed to resolve the underlying dispute will ordinarily not participate in the restored appeal. Further, the judge or advisor will not discuss the merits of the appeal or substantive matters involved in the ADR proceedings with other Board personnel. Unless the parties explicitly request to the contrary, and such request is approved by the Chairman, the assigned ADR settlement judge or neutral advisor will be recused from consideration of the restored appeal.

Written material prepared specifically for use in an ADR proceeding, oral presentations made at an ADR proceeding, and all discussions in connection with such proceedings between representatives of the parties and a settlement judge or a neutral advisor are confidential and, unless otherwise specifically agreed by the parties, inadmissible as evidence in any pending or future Board proceeding involving the parties or matter in dispute. However, evidence otherwise admissible before the Board is not rendered inadmissible because of its use in an ADR proceeding.

Guidelines, procedures, and requirements implementing the ADR method selected will be prescribed by agreement of the parties and the settlement judge or neutral advisor. ADR methods can be used successfully at any stage of the litigation. Adoption of an ADR method as early in the appeal process as feasible will eliminate substantial cost and delay. Generally, ADR proceedings will be concluded within 120 days following approval of their use by the Chairman.

The following ADR methods are consensual and voluntary. Both parties and the Board must agree to use of any of these methods.

1. Settlement Judge: A "settlement judge" is an administrative judge or hearing examiner who will not hear or have any formal or informal decision-making authority in the appeal and who is appointed for the purpose of facilitating settlement. In many circumstances, settlement can be fostered by a frank, in-depth discussion of the strengths and weaknesses of each party's position with the settlement judge. The agenda for meetings with the settlement judge will be flexible to accommodate the requirements of the individual appeal. To further the settlement effort, the settlement judge may meet with the parties either jointly or individually. A settlement judge's recommendations are not binding on the parties.

2. Minitrial: The minitrial is a highly flexible, expedited, but structured, procedure where each party presents an abbreviated version of its position to principals of the parties who have full contractual authority to conclude a settlement and to a Board-appointed neutral advisor. The parties determine the form of presentation without regard to customary judicial proceedings and rules of evidence. Principals and the neutral advisor participate during the presentation of evidence in accordance with their advance agreement on procedure. Upon conclusion of these presentations, settlement negotiations are conducted. The neutral advisor may assist the parties in negotiating a settlement. The procedures for each minitrial will be designed to meet the needs of the individual appeal. The neutral advisor's recommendations are not binding.

3. Summary Trial With Binding Decision: A summary trial with binding decision is a procedure whereby the scheduling of the appeal is expedited and the parties try their appeal informally before an administrative judge or panel of judges. A summary "bench" decision generally will be issued upon conclusion of the trial or a summary written decision will be issued no later than ten days following the later of conclusion of the trial or receipt of a trial transcript. The parties must agree that all decisions, rulings, and orders by the Board under this method shall be final, conclusive, not appealable, and may not be set aside, except for fraud. All such decisions, rulings, and orders will have no precedential value. The length of trial and the extent to which scheduling of the appeal is expedited will be tailored to the needs of each particular appeal. Pretrial, trial, and post-trial procedures and rules applicable to appeals generally will be modified or eliminated to expedite resolution of the appeal.

4. Other Agreed Methods: The parties and the Board may agree upon other informal methods which are structured and tailored to suit the requirements of the individual appeal.

The above-listed ADR procedures are intended to shorten and simplify the Board's more formalized procedures. Generally, if the parties resolve their dispute by agreement, they benefit in terms of cost and time savings and maintenance or restoration of amicable relations. The Board will not view the parties' participation in ADR proceedings as a sign of weakness. Any method adopted for dispute resolution depends upon both parties having a firm, good faith commitment to resolve their differences. Absent such intention, the best structured dispute resolution procedure is unlikely to be successful.