



DEFENSE LOGISTICS AGENCY
HEADQUARTERS
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IN REPLY
REFER TO J-33

PROCLTR 0 1-09

JUN 1 2 2001

MEMORANDUM FOR PROCLTR DISTRIBUTION LIST

SUBJECT: Alternative Dispute Resolution (ADR): Solicitation Provision
(DLAD Section 33.214 and 52.233-9001)

This PROCLTR establishes a solicitation provision as a mechanism for integrating ADR into DLA contracts. This is one of several DLA initiatives to increase the use of ADR in resolving contract disputes. Increased use of ADR is consistent with the Administrative Dispute Resolution Act (Public Law 104-320), the Federal Acquisition Regulation (FAR) section 33.2 14, and Departmental and Agency Directives (DODD 5145.5; DLA Directive 5145.1)

The solicitation provision is mandatory for DLA solicitations, unless a different ADR provision is used more specifically tailored to the acquisition. The ADR provision will be included in any resulting contract unless the offeror has opted out of the provision by checking a box. The offeror can also discuss alternate wording with the contracting officer. Agreeing to the provision means that both the contractor and DLA will be committed to use ADR by the resulting clause, except in limited circumstances.

The attached guidance was published as a proposed rule in the Federal Register on May 16, 2000. After receipt of comments, changes were made to clarify the language and to reference existing FAR and DLA requirements. The final rule was published in the Federal Register on May 17, 2001. The coverage will be incorporated into the electronic DLAD upon signature, and is effective immediately. The point of contact is Mr. William Latimer, J-336, who can be reached at DSN 427-3 154 (703-767-3 154), or via email at william_latimer@hq.dla.mil.

WILLIAM J. KENNEY
Executive Director
Logistics Policy and Acquisition Management

Attachment



PART 33

PROTESTS, DISPUTES, AND APPEALS

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SUBPART 33.2 - DISPUTES AND APPEALS

33.214 **Alternative dispute resolution (ADR)**

The contracting officer shall insert the provision at 52.233-9001 in all solicitations when the clause at FAR 52.233-1 is used or, for commercial items, FAR 52.212-4(d) is used, unless the conditions at FAR 33.203(b) apply, or unless a different ADR provision is used specifically tailored to the acquisition.

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52.233-9001 Agreement to Use Alternative Dispute Resolution (ADR).

As prescribed in 33.214(90), insert the following provision:

AGREEMENT TO USE ALTERNATIVE DISPUTE RESOLUTION (AUG 2004) - DLAD

Unless otherwise agreed by the parties, it is the Government's intention that, if unassisted negotiations are unsuccessful in resolving any dispute that may arise under the resulting contracting action, the parties will use alternative dispute resolution (ADR) techniques, in accordance with clause 52.233-9002, to try to resolve the dispute. Litigation will only be considered as a last resort when ADR is unsuccessful or has been documented by the party rejecting ADR to be inappropriate for resolving the dispute. Indicate your intention regarding ADR by checking one of the following options. NOTE: options (a) and (b) are available in any acquisition, whether negotiated or conducted via sealed bidding, and whether transacted manually or in an automated mode. Option (c) is available only in negotiated, non-automated acquisitions. Therefore, if you are quoting via a website or EDI 843 transaction, any choice of option (c) will default to a (b) within the system.

(a) If you accept the clause at 52.233-9002, Alternative Dispute Resolution (ADR), check here:_____.

(b) If you do not accept the clause at 52.233-9002, Alternative Dispute Resolution (ADR), and choose to "opt out" of the use of ADR altogether, check here:_____.

(c) If you accept the premise of use of alternative dispute resolution, but choose to negotiate alternate language to the clause at 52.233-9002, Alternative Dispute Resolution (ADR), with the contracting officer, check here:_____.

(End of provision)

52.233-9002 Alternative Dispute Resolution (ADR).

As prescribed in 33.214(91), insert the following clause:

ALTERNATIVE DISPUTE RESOLUTION (JUN 2003) - DLAD

(a) The parties agree to negotiate with each other to try to resolve any disputes that may arise. If unassisted negotiations are unsuccessful, the parties will use alternative dispute resolution (ADR) techniques to try to resolve the dispute. Litigation will only be considered as a last resort when ADR is unsuccessful or has been documented by the party rejecting ADR to be inappropriate for resolving the dispute.

(b) Before either party determines ADR inappropriate, that party must discuss the use of ADR with the other party. The documentation rejecting ADR must be signed by an official authorized to bind the contractor (see FAR 52.233-1), or, for the Agency, by the contracting officer, and approved at a level above the contracting officer after consultation with the ADR Specialist and with legal counsel (see DLA Directive 5145.1). Contractor personnel are also encouraged to include the ADR Specialist in their discussions with the contracting officer before determining ADR to be inappropriate.

(End of clause)