

DLA OGC ACQUISITION ADR PROGRAM IMPLEMENTATION PLAN, 2003

I. SCOPE

A. This Plan implements the DLA Acquisition ADR Program under DLA Directive 5145.1, and applies to acquisition ADR throughout the DLA Office of General Counsel. It revises and supercedes the 1999 Implementation Plan.

B. This Implementation Plan establishes required and recommended elements of field activity Acquisition ADR Programs, while still allowing local flexibility.

C. The Alternative Dispute Resolution Specialist (ADRS) at each field activity is responsible for executing this Implementation Plan. The DLA Acquisition ADR Program is under the general guidance of the DLA Associate General Counsel (Acquisition), and under the ultimate authority of the DLA General Counsel.

II. PLAN COMPONENTS

A. Training

1. Acquisition Attorneys: All acquisition attorneys must take a minimum of 3 days of ADR user training, preferably focused on the agency's preferred method of ADR, mediation. Each acquisition attorney must also take periodic ADR refresher training of some type (nature and length is flexible), preferably no less than once every three years.

2. Acquisition Personnel: The ADRS is responsible for providing acquisition ADR training to appropriate personnel in their organizations. A minimum of one hour of ADR Awareness Training will be provided to all contracting personnel, on a periodic/recurring basis. ADR Skills Training will be provided to all contracting personnel likely to participate in ADR processes (e.g., contracting officers). Skills training should provide a sufficient level of ADR expertise to enable the employee to evaluate cases for ADR and actually participate in an ADR procedure. Once concluded, the value of training should be assessed (the training program itself, and the extent to which it advances understanding and use of ADR in the activity).

3. Training Opportunities. The ADRS serves as a resource for ADR training opportunities at each field activity, and is available to provide information on in-house and outside training courses, programs, and seminars. Training can also include non-classroom opportunities, such as cross-visits to other offices, second-chairing existing ADRs, writing articles, and giving presentations.

B. Publicity

1. General. The ADRS is responsible for developing and executing a written ADR publicity or marketing plan to share information about ADR successes and other areas of

interest. Publicity should target clients, other DLA lawyers, and the contracting community. Suggestions are listed in DLA-OGC's "Publicizing ADR Contracting Success Stories/Information," January 29, 1999. In addition to the DLA ADR web page, (www.dsc.dla.mil/Offices/legal/adr.adr.html), offices may consider developing their own ADR web page as a way of publicizing ADR and integrating it into agency acquisition processes.

2. ADR Practice Group/Law Notes. The ADR Practice Group, led by the ADR Program Manager, promotes ADR awareness and expertise among DLA lawyers, as does the *ADR Law Notes* publication. Each field activity Office of Counsel must have at least one lawyer assigned to the ADR Practice Group, and that attorney is responsible for conveying information about acquisition ADR to the group and within their respective offices. Field activities should contribute at least one article a year for the *ADR Law Notes*.

C. Institutionalizing ADR

1. General. Steps should be taken to “institutionalize” ADR, or make it part of the acquisition disputes process and agency operations. This can include: developing worksheets for assessing cases for ADR, working ADR into existing processes, integrating efforts of the Office of Counsel with those of the acquisition client, developing ADR clauses for specific acquisitions, expanding ADR beyond the traditional context of litigation disputes, addressing ADR in position descriptions and/or performance standards, and establishing ADR awards and recognition programs.

2. Litigation

a. GAO Protests: All GAO protests must be reviewed for possible use of ADR. Outcome prediction ADR must be requested for any case with significant risk, unless rejection of ADR has been documented in accordance with DLA Directive 5145.1.

b. ASBCA Litigation: Once a case has been docketed at the ASBCA, field attorneys should write the appellant, addressing the possibility of using ADR to resolve the dispute. Within 60 days after the case has been docketed, the field activity should offer the appellant ADR, in writing, or document why ADR is not appropriate.

c. Court Contract Litigation: ADR should be explored with the Department of Justice unless inappropriate for the case, in which written justification is required under DLA Directive 5145.1.

III. PROGRAM EVALUATION

A. Data Collection. All efforts to resolve disputes through ADR must be reported through the ADR Module of the Case Management System (CMS). Complete information must be reported in the ADR Module because some information on individual cases will not automatically transfer between the ASBCA/Courts/GAO modules and the ADR Module. ADR Module cases must be opened on any matter in which ADR methods involving a neutral are used, regardless of whether or not the matter has been raised in formal litigation. Disputes resolved through unassisted

negotiation will not be reported in the ADR Module. The ADRS must review CMS data at least semi-annually to ensure its accuracy and completeness.

B. Information to Field Command. Some type of ADR Acquisition information must be provided at least annually to Field Command, and other acquisition officials as appropriate, with a copy to DLA-DG. Information reported could include, for example, number of acquisition ADRs, success rate, cost saved/avoided, time saved, and new initiatives.

C. Program Improvement. The ADRS is responsible for identifying barriers to ADR and working to remove them, and for furthering the growth and success of ADR at the activity. The ADRS should initiate and encourage program changes to incorporate substantive and process improvements, and share such improvements with other ADRSs and DLA-DG.

October 2003

DG

October 2, 2003

MEMORANDUM FOR CHIEF COUNSEL

SUBJECT: Acquisition ADR Implementation Plan

Enclosed is the revised Acquisition ADR Implementation Plan, updating the earlier 1999 version. This plan, which has been coordinated among your ADR Specialists, is intended to give flexibility to the field in designing and developing local ADR Acquisition programs, while still highlighting program components required overall. I know you all will build on the elements contained in this plan as you expand your ADR Acquisition efforts.

BRUCE W. BAIRD
General Counsel

Attachment

cc:
DLA ADR Specialists

ADR Specialists:

I would like your review and comment on the revised ADR Acquisition Implementation Plan (applies only to Acquisition ADR). As you (hopefully) know, this Plan was created in 1999 to give some overall framework for local ADR Acquisition programs, while leaving flexibility at the field. The current 1999 version badly needs updating.

Before revising it, I thought about whether or not we should eliminate it entirely, but decided against that. Among other reasons, the DOD ADR Directive is being expanded to encourage components to have certain elements in their ADR programs, and our former/revised implementation plan is consistent with that. It is also helpful to have more specifics when we discuss our ADR program, such as in DOD circles, or for the recent OFPP awards program. It also helps our program grow and evolve. So shortening it and giving it more focus seemed the best way to go.

In your review, note the distinction between “must” and “should” elements, the latter being highly recommended but not absolutely mandatory. Many elements come from the original 1999 Plan (attached below for info). Other elements come from other existing documents (such as some of the attorney training elements and the GAO and ASBCA litigation info). Still others are new (such as local review of CMS data and reporting to field command -- though as a practical matter you probably do that already).

I'd appreciate comments by Sept. 23, please, one set per office.