

Defense Logistics Agency Instruction



November 15, 2006
Modified October 20, 2009
DG

Alternative Dispute Resolution

References: Refer to Enclosure 1.

1. **PURPOSE.** This process is in place in order to anticipate and resolve legal issues and potential formal disputes at the earliest possible stage, thereby reducing the time, expense, delay, acrimony, and other adverse consequences of the dispute resolution process. Through early intervention in disputes, the goal of Alternative Dispute Resolution (ADR) is to preempt the development of litigation whenever possible. When litigation has already been initiated, ADR may be used to reduce the length, contentiousness, and adverse impact of the full-blown litigation process.

2. **APPLICABILITY.** This DLA Instruction applies to Headquarters (HQ) DLA and DLA Primary Level Field Activities (PLFA).

3. **POLICY.** It is DLA's policy to consider ADR in every situation where unassisted negotiations have not proven effective in resolving an issue or dispute. ADR techniques are to be used as an alternative to formal dispute channels, such as administrative and court litigation, to the maximum extent practicable. DLA ADR policy is consistent with Department of Defense (DoD) Directive 5145.5, Alternative Dispute Resolution (ADR).

4. **RESPONSIBILITIES.** Refer to Enclosure 2.

5. **PROCEDURES.** See additional information at Enclosure 3.

a. A dispute or contentious issue arises that can be the subject of litigation or formal administrative proceedings.

b. The responsible Agency official determines if it can be resolved through unassisted negotiation.

c. If it can not, determine if ADR is appropriate.

(1) A management decision not to use ADR shall only be made after its possible use has been fully evaluated and discussed. At a minimum, discussions shall take place between the

deciding official and the activity ADR specialist. A decision not to use ADR must be documented, in writing, by an official within the activity who is at least one level above the deciding official.

(2) If the decision is to use ADR, a draft agreement to use ADR will be prepared for the parties.

d. Implement the ADR technique.

(1) If an agreement between the parties is reached, a draft of the agreement is required. Review the draft for legal sufficiency and coordinate with those impacted by the draft agreement.

(2) If an agreement cannot be reached, terminate ADR.

6. EFFECTIVE DATE. November 15, 2006.

Director, DLA Enterprise Support

3 Enclosures

Enclosure 1 – References

Enclosure 2 – Responsibilities

Enclosure 3 – Additional Information

Enclosure 1
References

1. ADR techniques, including mediation, facilitation, settlement judge, mini-trial, and ombudsperson. Definitions of these and other techniques are accessible online at the DLA ADR Web site: <http://www.dla.mil/adr>.
2. ADR Champions, including the DLA General Counsel, Local Chief Counsels, the DLA Program Manager, HQ Program Advocates, Local ADR Specialists, and Members of the DLA Office of General Counsel ADR Practice Group.
3. DLA ADR pronouncements, media tools, and publications, including supplements to the Federal Acquisition Regulations; DLA Director Memorandum, subject: Use of Alternative Dispute Resolution; A Guide to the Defense Logistics Agency Equal Employment Opportunity (EEO) Mediation Program (RESOLVE Guidebook); ADR Law Notes; and, The Standards of Conduct For DLA Mediators. These and other pronouncements, publications, and resources are accessible online at the DLA ADR Web site: <http://www.dla.mil/adr>.
4. Statutes and Executive Orders, including the Administrative Dispute Resolution Acts of 1996 and 1998, the Civil Service Reform Act of 1978, and Executive Orders 12988 and 12979.
5. Government-wide, departmental, and agency regulations, including DoD Directive 5145.5, EEOC Regulation 1614, and the Federal Acquisition Regulation and its supplements.

Enclosure 2 Responsibilities

1. Disputes should first be addressed using unassisted negotiation. Unassisted negotiation occurs when the immediate parties to the dispute attempt to resolve the matter on their own.

2. ADR techniques shall be considered as soon as a dispute has not been resolved through unassisted negotiation; however, ADR techniques can be requested at any stage of a dispute by any of the parties.

a. A decision to use or not use ADR should occur as soon as possible or practicable after recognition of a dispute, even before recourse to formal dispute channels, such as courts or administrative boards. The Government official with primary responsibility for responding to the issue, claim, or appeal is the primary person who must consider the use of ADR. Decisions should occur at the lowest level possible.

b. A management decision not to use ADR when unassisted negotiations have not been effective shall only be made after its possible use has been fully evaluated and discussed. At a minimum, discussions shall take place between the deciding official and the activity ADR specialist concerning the possible use of ADR. The decision not to use ADR shall be made by an official at least one level above the deciding official. A management decision not to use ADR shall be explained in writing, citing one or more of the reasons in Section 572(b) of the Administrative Dispute Resolution Act of 1996 or other specific reasons that make the use of ADR inappropriate or not practicable (<http://www.dsccl.dla.mil/offices/legal/adr/othergovt.html>).

c. If ADR is not originally used and a claim or appeal related to the original dispute is subsequently filed with a court or administrative board of competent jurisdiction, a new decision must be made whether to use or not use ADR.

3. If Agency officials decide to use ADR, it will be used as long as the other party to the dispute also agrees to the use of ADR.

4. If ADR will be used:

a. A technique must be agreed upon by the parties. Special consideration should be given to using mediation. Other recognized techniques include, but are not limited to, facilitation, ombudsperson, settlement judges, and mini-trials.

b. A neutral party will be engaged. Sources of neutral parties are DLA employees, other Government employees, and private practitioners. The activity ADR specialist will assist with selection of a qualified neutral party.

c. An agreement to use ADR will be drafted and specify the technique to be used.

d. ADR will be conducted at the scheduled time and place acceptable to all parties.

e. Although not required, parties have the option to have a representative present at an ADR event.

f. The ADR process ends.

g. If an agreement has been reached, an agreement which reflects the resolution terms is drafted, reviewed, and signed by all parties. If the agreement needs concurrence and review by individuals not present, then it is not final until it passes the review/concurrence channels.

h. If an agreement has not been reached, the ADR process ends. Formal dispute channels, including administrative or court litigation, may then be initiated or resumed.

Enclosure 3
Additional Information

1. For disputes processed under the provisions of a collective bargaining agreement (CBA), the CBA provisions take precedence over this DLA Instruction. For disputes processed under the jurisdiction of an outside agency or forum, the statutory and regulatory requirements of those agencies and forums take precedence over this DLA Instruction.
2. DLA has implemented a mediation program specifically designed to provide employees with quick, cost-effective, and fair resolutions of Equal Employment Opportunity (EEO) complaints. The program, called Reach Equitable SOLUTIONS Voluntarily and Easily (RESOLVE), is in addition to all current rights and entitlements under existing EEO procedures. The process is described separately in the DLA One Book Process Chapter at:
<http://www.dla.mil/do/resolve/resolve.asp>.
3. The ADR process is largely decentralized. The Associate General Counsel, Dispute Resolution, provides oversight, professional supervision, and staff assistance to field legal operations performing this process at worldwide Office of Counsel locations.
4. DLA mediators are required to have a minimum of 32 hours of classroom instruction in mediation from an approved training organization, serve in accordance with a standards-of-conduct agreement, and co-mediate at least 3 mediations. Supervisory approval to become a mediator must be obtained before training is initiated.
5. DLA mediators are ranked by experience and training and are evaluated by peers and participants.
6. Each DLA activity participating in an ADR event must identify its outputs, charge its costs against these outputs, and have a method to record them.
7. The preferred method of measuring the outputs is some increment of attorney/staff time charged to the appropriate output, with other direct costs and overhead added, as necessary. The preferred funding arrangement between DLA activities is direct funding by DLA.