



DEFENSE INFORMATION SYSTEMS AGENCY
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DISA INSTRUCTION 100-50-14*

21 November 2005

POLICIES

Alternative Dispute Resolution

1. **Purpose.** This Instruction prescribes policy and assigns responsibilities to promote the greater use of alternative dispute resolution (ADR) techniques. It also describes the ADR process and provides guidance as to the appropriate use of ADR techniques.
2. **Applicability.** This Instruction applies to all military and civilian personnel assigned to or employed by the Defense Information Systems Agency (DISA) at any of its locations or field activities.
3. **Authority.** This Instruction is published in furtherance of the policies of the Alternative Dispute Resolution Act of 1990, P.L. 101-552. A memorandum from the Deputy Secretary of Defense dated 10 January 1992 and a memorandum from the Undersecretary of Defense for Personnel and Readiness dated 11 May 1994 implemented that statute. The policy of promoting ADR is expressed in other statutory and regulatory authorities; for example, the Americans with Disabilities Act of 1990, 5 U.S.C. §§ 571 et seq.; the Equal Employment Opportunity Regulations, 29 C.F.R. Part 1614; the Federal Acquisition Regulation, 48 C.F.R. Part 33, Executive Order No. 12988, 5 February 1996; and DoD Directive 5145.5, Alternative Dispute Resolution (ADR), 22 April 1996.
4. **Definitions.**
 - 4.1 **Alternative Dispute Resolution (ADR).** ADR offers a broad spectrum of approaches for dealing with conflict and seeking solutions satisfactory to all parties. ADR is any technique agreed on by the parties for resolving issues in controversy without resort to litigation in either an administrative or judicial forum. ADR techniques include settlement negotiations, mediation, conciliation, facilitation, arbitration, early

neutral evaluation, mini-trials, factfinding, peer review panels, ombuds, or any combination thereof.

4.2 Partnering. Partnering is an advance cooperative effort among all parties interested in a project. The aim of partnering, a technique recognized in procurement policy, is to avoid disputes through team-building between the Government and its contractors and customers.

4.3 Deciding Official. The person responsible for and with the authority to take action to resolve an issue in a pending dispute or controversy (e.g., the Contracting Officer, supervisor, or other management official having authority to grant relief or otherwise address an issue).

5. Policy. As the use of ADR usually results in faster, less expensive, and less contentious resolution of the issue in controversy, ADR techniques will be used as an alternative to litigation or formal administrative procedures to the maximum extent practicable. The value of ADR to the Agency lies in its prevention of the unnecessary expenditure of time, money, and other resources. In addition, ADR mends, maintains, and improves relationships by focusing on mutual interests and concerns. Further, ADR opens lines of communication and offers mutually acceptable solutions to pending disputes.

5.1 The use of ADR will be considered in every situation where unassisted negotiations have not proved effective. All DISA personnel, regardless of location or duties, shall be alert for opportunities to use ADR to avert or avoid litigation.

5.2 Use of ADR techniques, whether in the context of personnel and Equal Employment Opportunity (EEO) issues or contract disputes or any other issues, shall be free from restraint, interference, coercion, discrimination, or reprisal.

5.3 A management decision not to use ADR, when unassisted negotiations have been unsuccessful, shall only be made after its possible use has been fully evaluated and discussed. At a minimum, discussions concerning the possible use of ADR shall take place between the deciding official and the Agency Dispute Resolution Specialist. The decision not to use ADR shall be made by an official at least one level above the deciding official, but only after consultation with legal counsel.

6. Dispute Prevention and Resolution Process. Dispute prevention is preferable to any method of dispute resolution.

Acting to prevent disputes before they occur is a key to building a cooperative and understanding attitude with our personnel and our contractors. Having a clear understanding early on of the goal to be accomplished and the methods to achieve that goal will greatly assist in dispute avoidance. Partnering is an example of a technique for dispute avoidance.

6.1 If a dispute arises, efforts should be made to resolve the dispute through interest-based bargaining without the intervention of third party principals. A thorough, methodical, and objective review at the earliest stage of a dispute is essential. The review itself should be structured and understood by all parties (including the agency's customer, if applicable). All parties should also be given the opportunity to present, explain, and discuss their positions.

6.2 If a dispute cannot be avoided and cannot be resolved without the use of third party principals, agency personnel, with the advice of the Agency Dispute Resolution Specialist and the ADR Specialist for their organizational component, shall consider whether the dispute is appropriate for the application of ADR techniques. Every dispute, regardless of the subject matter, is a potential candidate for ADR; therefore, organizational components shall identify and eliminate unnecessary barriers to the use of ADR.

7. Appropriateness of ADR Techniques.

7.1 ADR techniques may be appropriate where one or more of the following circumstances are evident:

7.1.1 The dispute involves factual or other nonprecedential issues.

7.1.2 Traditional processes appear unlikely to resolve the issue short of litigation.

7.1.3 The parties want to settle the dispute quickly.

7.1.4 The parties wish to maintain, establish, or restore good working relationships.

7.1.5 The importance of the issue is minor compared to the potential cost and disruption that will occur if traditional dispute resolution processes are used.

7.1.6 A neutral or panel is more likely to understand the complexities of the case.

7.2 Generally, ADR shall not be used when one or more of the following circumstances are evident:

7.2.1 A definitive and precedential resolution is required and an ADR proceeding is not likely to be generally accepted.

7.2.2 The matter in dispute involves or may bear on significant questions of Government policy that require additional procedures before final resolution and will not likely serve to develop a recommended Agency policy.

7.2.3 Maintenance of established policy is of special importance to reduce variations or inconsistency among individual decisions.

7.2.4 The matter in dispute significantly affects persons who are not parties to the proceeding.

7.2.5 A full public record is important and the ADR proceeding will not provide that record.

7.2.6 A dispute resolution proceeding would interfere with the Agency's requirement to maintain continuing jurisdiction over the matter with the authority to alter the disposition of the matter in light of changed circumstances.

8. Responsibilities.

8.1 Specialist.

8.1.1 **Agency Dispute Resolution Specialist.** The General Counsel, DISA, will serve as the Agency Dispute Resolution Specialist and will:

8.1.1.1 Administer the provisions of this Instruction.

8.1.1.2 Monitor ADR implementation.

8.1.1.3 Evaluate ADR execution and results.

8.1.1.4 Facilitate access to third party neutrals, as appropriate.

8.1.1.5 Furnish guidance and assistance in ADR implementation.

8.1.1.6 Advise the heads of DISA organizational components, where appropriate, on recommended ADR training for personnel within DISA.

8.1.1.7 Approve any further implementation of ADR by any DISA component.

8.1.1.8 Furnish guidance and assistance, as needed, by the component ADR Specialists on specific cases.

8.1.1.9 Serve as the primary Agency representative to the DOD ADR Coordinating Committee.

8.1.2 Principal Directors of Strategic Business Units, Directors and Chief of Shared Services Units, Direct Reports, and Special Advisors, Headquarters, DISA, and Commanders of DISA Combatant Command Field Offices. These individuals or their designees shall be the ADR Specialists for their components and will:

8.1.2.1 Administer ADR within their organizations under the management of the Agency Dispute Resolution Specialist, including the management of ADR training initiatives and ensuring that Agency personnel have access to existing ADR resources.

8.1.2.2 Coordinate for approval of the Agency Dispute Resolution Specialist any memorandum, letter, or directive that implements an ADR plan or policy within that organizational component.

8.1.2.3 Keep the Agency Dispute Resolution Specialist informed of the status of each matter referred to an ADR proceeding.

8.1.2.4 Identify the appropriate settlement, approval, or disapproval authority at the outset of any ADR initiative, regardless of whether that authority is within DISA or outside of DISA.

8.1.2.5 Ensure the settlement, approval, or disapproval authority is kept informed on the status of specific matters, as necessary, and that any final disposition of the dispute is properly executed.

8.1.2.6 Provide statistics and other information for reporting purposes, as requested by the Agency Dispute Resolution Specialist.

8.1.2.7 Ensure ADR techniques are used, to the maximum extent practicable, to avoid the unnecessary expenditure of time, money, and resources to engage in litigation.

8.1.2.8 Periodically review the degree of ADR usage within their activities and take steps to foster a greater use of ADR and the elimination of any unnecessary barriers.

8.1.2.9 Designate an activity ADR Specialist to facilitate the use and most appropriate form of ADR within their organizations.

8.1.2.10 Provide ADR training on a regular basis to personnel involved in implementing ADR within the Agency.

8.3 **Specific.**

8.3.1 In addition to implementing ADR within the Agency, as detailed in subparagraph [8.1.2](#), the following components have Agency-wide ADR responsibilities subject to the overall guidance and coordination of the Agency Dispute Resolution Specialist.

8.3.1.1 **Director for Manpower, Personnel, and Security (MPS).** The Director, MPS, will apply ADR as it relates to general personnel disputes (e.g., grievances, alleged unfair labor practices, and similar workplace conflicts) identified by personnel assigned to the Agency.

8.3.1.2 **Director of Equal Employment Opportunity (EEO) Programs, Equal Employment Opportunity and Cultural Diversity (EEO&CD).** The Director, EEO&CD, will apply ADR as it relates to EEO complaints of discrimination. (In working with the Agency Dispute Resolution Specialist, the Director, EEO&CD, acts in accordance with DOD as well as Equal Employment Opportunity Commission (EEOC) directives.)

8.3.1.3 **Director for Procurement and Logistics (PLD).** The Director, PLD, will apply ADR as it relates to disputes raised by persons or businesses under contract to the Agency or by parties who raised an interest in the award of an Agency procurement, grant, or cooperative agreement.

8.3.2 The Director, MPS; the Director, EEO&CD; and the Director, PLD, will maintain a plan for utilizing ADR techniques in their dispute procedures. (At a minimum, the plan should include a policy statement promoting the use of ADR in workplace or contractual disputes, the ADR technique(s) and procedures to

be used, the method(s) for obtaining neutrals, and responsibility for data collection and reporting.)

9. **ADR Steering Committee.** The Agency Dispute Resolution Specialist chairs an ADR steering committee which is comprised of members representing MPS, PLD, and EEO&CD. Component ADR Specialists are eligible to attend ADR steering committee meetings.

FOR THE DIRECTOR:



MARK S. BOWMAN
Colonel, USA
Chief of Staff

SUMMARY OF SIGNIFICANT CHANGES. This revision includes an expansion of the underlying authorities, a broadening of the policy statement to include both the promotion of ADR because of its value to the Agency and a requirement that an official at least one level above the deciding official make a decision not to use ADR, the adoption of plans to use ADR techniques in dispute procedures, and details concerning the membership of an ADR steering committee.

*This Instruction cancels DISAI 100-50-14, 29 September 1994.
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