

33.214 Alternative dispute resolution (ADR).

(a) The objective of using ADR procedures is to increase the opportunity for relatively inexpensive and expeditious resolution of issues in controversy. Essential elements of ADR include-

(1) Existence of an *issue in controversy*;

(2) A voluntary election by both parties to participate in the ADR process;

(3) An agreement on alternative procedures and terms to be used in lieu of formal litigation; and

(4) Participation in the process by officials of both parties who have the authority to resolve the *issue in controversy*.

(b) If the *contracting officer* rejects a contractor's request for ADR proceedings, the *contracting officer shall* provide the contractor a written explanation citing one or more of the conditions in 5 U.S.C. 572(b) or such other specific reasons that ADR procedures are inappropriate for the resolution of the dispute. In any case where a contractor rejects a request of an agency for ADR proceedings, the contractor *shall* inform the agency *in writing* of the contractor's specific reasons for rejecting the request.

(c) ADR procedures *may* be used at any time that the *contracting officer* has authority to resolve the *issue in controversy*. If a *claim* has been submitted, ADR procedures *may* be applied to all or a portion of the *claim*. When ADR procedures are used subsequent to the issuance of a *contracting officer's* final decision, their use does not alter any of the time limitations or procedural requirements for filing an appeal of the *contracting officer's* final decision and does not constitute a reconsideration of the final decision.

(d) When appropriate, a *neutral person may* be used to facilitate resolution of the *issue in controversy* using the procedures chosen by the parties.

(e) The confidentiality of ADR proceedings *shall* be protected consistent with 5 U.S.C. 574.

(f)

(1) A *solicitation shall* not require arbitration as a condition of award, unless arbitration is otherwise required by law. *Contracting officers should* have flexibility to select the appropriate ADR procedure to resolve the issues in controversy as they arise.

(2) An agreement to use arbitration *shall be in writing* and *shall* specify a maximum award that *may* be issued by the arbitrator, as well as any other conditions limiting the range of possible outcomes.

(g) Binding arbitration, as an ADR procedure, *may* be agreed to only as specified in agency guidelines. Such guidelines *shall* provide advice on the appropriate use of binding arbitration and when an agency has authority to settle an *issue in controversy* through binding arbitration.

Parent topic: Subpart 33.2 - Disputes and Appeals