



DCMA Manual 4201-21

Alternative Dispute Resolution and Conflict Management

Office of Primary Responsibility	Talent Management Capability
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Purpose: This issuance, in accordance with the authority in DoD Directive 5105.64, "Defense Contract Management Agency (DCMA)," (also referred to as "Agency" throughout the document), implements policy and assigns responsibility for:

- Implementing policy to facilitate the use of alternative methods for resolving disputes or issues in controversy other than through administrative and court adjudicatory processes
- Implementing framework to encourage the expanded use of alternative means of dispute resolution and conflict management practices as an integral part of normal business

practices within DCMA in accordance with the authority in Sections 571 through 584 of Title 5, United States Code and Executive Order 12988

- Encouraging DCMA activities to use the Alternative Dispute Resolution process whenever feasible, and when such use will materially contribute to the prompt, fair, and efficient resolution of disputes involving the Agency without unnecessary expenditure of time and money
- Providing DCMA mandatory requirements that are not appropriate for Contract Management Office Commander/Directors deviation approval authority
- Expanding the use of Alternative Dispute Resolution and conflict management practices in DCMA consistent with DoD policy
- Requiring DCMA to provide training to employees involved in implementing and maintaining DCMA's Alternative Dispute Resolution policy and program
- Requiring DCMA to identify and eliminate barriers to the use of Alternative Dispute Resolution and conflict management practices

TABLE OF CONTENTS

SECTION 1: GENERAL ISSUANCE INFORMATION	4
1.1. Applicability.....	4
1.2. Policy.....	4
1.3. Background on Alternative Dispute Resolution.....	4
1.4. Determine Alternative Dispute Resolution Application Methodology	5
SECTION 2: RESPONSIBILITIES	6
2.1. Dispute Resolution Specialist	6
2.2. Alternative Dispute Resolution Specialists	6
2.3. Director, Equal Employment Opportunity	7
SECTION 3: PROCEDURES	8
3.1. Implementing Alternative Dispute Resolution.....	8
3.2. Who Participates in Alternative Dispute Resolution.....	8
3.3. When Alternative Dispute Resolution is Not Utilized	8
3.4. Expenses.....	9
3.5. Tools and Additional Guidance	9
GLOSSARY	10
G.1. Definitions.....	10
G.2. Acronyms	11
REFERENCES	12

SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY. This Manual applies to all DCMA activities except when other policy or agreement takes precedence (e.g., Collective Bargaining Agreement(s)). This Manual does not create any rights or reservations and may not be relied on by any person, organization, or other entity to allege a denial of any rights or reservations.

1.2. POLICY. This Manual provides guidance and direction regarding the Agency's Alternative Dispute Resolution (ADR) Program and sets forth guidelines for the use of ADR within DCMA to fairly and efficiently resolve disputes or issues in controversy other than through administrative and court adjudicatory processes when feasible. It is DCMA policy to execute this Manual in a safe, efficient, effective and ethical manner.

1.3. BACKGROUND ON ADR.

a. This process provides an alternative to litigation or formal administrative procedures to resolve disputes or issues in controversy arising in the business of the Agency. The use of ADR may result in faster, less expensive, and less contentious resolution of issues in controversy at the lowest possible level. Therefore, the ADR process is strongly encouraged when feasible and not prohibited by another policy or agreement, and must be used as an alternative to litigation or formal administrative procedures to the maximum extent practicable and appropriate.

b. ADR consists of various methods or a combination of methods utilizing a third-party neutral to assist the parties in resolving disputes. Some of these methods include mediation, conciliation, facilitation, fact-finding, early neutral evaluation, mini-trials, settlement judge, summary trial with binding decision at the Armed Services Board of Contract Appeals (ASBCA) and arbitration. The term ADR does not include unassisted negotiation.

c. While all forms of ADR are available for use, if appropriate, special consideration should be given to use of mediation. Mediation, in which the parties to a dispute meet in a non-adversarial setting and arrive at their own resolution with the help of a skilled intermediary, is especially effective for workplace or contractor disputes.

d. In arbitration, the issue in controversy is decided in part or in whole by a third-party neutral. Arbitrations will be conducted in accordance with Section 571, Public Law 104-320, otherwise known as the Administrative Dispute Resolution Act of 1996. The Act does not currently permit binding arbitration unless approved by the Department of Justice. Additionally, the Collective Bargaining Agreement between DCMA and the American Federation of Government Employees Council 170 contains arbitration guidance and procedures for employee grievances that must be followed, if applicable.

e. ADR may be used to resolve the entire issue in controversy or a portion of the issue in controversy. While ADR may generally be undertaken at any time in a dispute, initially, it should be considered for resolution of the dispute at the earliest appropriate opportunity.

f. Use of ADR may not be appropriate in matters involving:

(1) Current fraud or other investigations or in cases where a definitive and authoritative decision is needed as a precedent.

(2) Matters involving significant issues of government policy that require procedural development and ADR will not assist in policy development.

(3) Maintaining and establishing policy or avoiding variations in decisions are especially important.

(4) Matters significantly affects non-parties.

(5) Public record of the proceeding or resolution is important.

(6) Agencies that maintain continuing jurisdiction over the matter with the right to alter the resolution, as circumstances demand.

1.4. DETERMINE ADR APPLICATION METHODOLOGY.

a. The use of ADR in Equal Employment Opportunity (EEO) related disputes will be undertaken in accordance with DCMA Director's Policy Statement 005, "Policy Statement on Alternative Dispute Resolution," and pursuant to the governing Equal Employment Opportunity Commission's (EEOC) rules, regulations, and procedures. Use of ADR in other workplace disputes will be undertaken in accordance with Merit Systems Protection Board (MSPB); Office of Special Counsel, Federal Mediation and Conciliation Service, Federal Labor Relations Authority rules, regulations, and procedures; Collective Bargaining Agreement(s), and/or other relevant guidance, as appropriate.

b. The use of ADR in contract disputes will be undertaken in accordance with the guidance provided in DCMA Manual 2501-09, "Contract Claims and Disputes," pursuant to governing law and regulation, including United States Code, Title 5, Sections 571 through 584 and DoD Instruction 5145.05, "Alternative Dispute Resolution (ADR) and Conflict Management."

SECTION 2: RESPONSIBILITIES

2.1. DRS. The DRS is the senior Agency official responsible for development of DCMA's ADR program and its implementation. The DCMA General Counsel will serve as the DRS. The DRS (or designee) will:

- a. Establish, implement, and operate programs to expand the use of ADR and conflict management practices in DCMA consistent with DoD policy.
- b. Review and revise, where appropriate, existing ADR and conflict management practices to promote increased awareness and use of ADR and conflict management practices consistent with DoD policy.
- c. Identify and eliminate barriers to the use of ADR and conflict management practices.
- d. Monitor implementation, evaluate program execution and results, gather and maintain data describing DCMA's use of ADR.
- e. Provide training to employees involved in implementing and maintaining DCMA's ADR policy and program.
- f. Provide to the DoD Deputy General Counsel (Legal Counsel), through the Associate Director, Defense Office of Hearings and Appeals Center for Alternative Dispute Resolution:
 - (1) Feedback regarding implementation of DoD Instruction 5145.05.
 - (2) Other such reports as may be authorized or required by Federal law or policy.
 - (3) Upon request of the Deputy General Counsel (Legal Counsel), but not more than annually, DoD ADR data collected regarding existing ADR programs using DD Form 2815, "Alternate Dispute Resolution (ADR) Report."
- g. Represent the Agency on the DoD ADR Coordinating Committee.

2.2. ADRS. An ADRS is an individual designated by the DCMA General Counsel with subject area ADRS authority who is responsible for implementation and administration of the ADR program for either contract disputes or workplace disputes. The ADRS for contract disputes is the Director of the Contract Dispute Resolution Center, and the ADRS for employment related disputes is the Senior Associate General Counsel for Ethics and Personnel, unless otherwise designated by the General Counsel. The ADRS for each subject area will:

- a. Advise and assist DCMA personnel in the use of ADR, including, recognizing situations appropriate for use of ADR, locating third-party neutrals and scheduling ADR sessions.
- b. Conduct an annual review of the ADR program within their subject area and, if warranted, take steps to promote greater use of ADR.

c. Provide ADR training to appropriate Agency personnel.

d. Gather and maintain data as necessary to complete DD Form 2815 to provide the DRS information, as requested, on the status of the ADR program within their subject area.

e. The ADRS for contract disputes will report all contract related ADR information for the fiscal year as necessary to complete DD Form 2815 by January 15 each year to the ADRS for employment related disputes for consolidation into the DCMA report transmitted to the DoD Deputy General Counsel (Legal Counsel).

f. The ADRS for employment related disputes will gather and consolidate all information (contract and employment) necessary to complete DD Form 2815 to ensure the DCMA report is transmitted to the DoD Deputy General Counsel (Legal Counsel) no later than February 15 each year as required.

2.3. DIRECTOR, EEO. The EEO Director will report all ADR information for the fiscal year as necessary to complete DD Form 2815 by January 15 each year to the ADRS for employment related disputes for consolidation into the overall DCMA report that is transmitted to the DoD Deputy General Counsel (Legal Counsel).

SECTION 3: PROCEDURES

3.1. IMPLEMENTING ADR. DCMA employees will consider using ADR in every situation where unassisted negotiation has not been effective and the other party has filed or has a right to file an action before a Court or formal administrative body. This includes ADR as provided for in this Manual, as well as ADR processes provided for by other agencies and in the rules, general orders, and procedures of judicial and quasi-judicial bodies such as the United States Court of Federal Claims, the ASBCA, EEOC, MSPB, Office of Special Counsel, Federal Mediation and Conciliation Service, and Federal Labor Relations Authority. Advice, assistance, and training in the use of ADR are available through the DRS, ADRS, and assigned legal counsel.

3.2. WHO PARTICIPATES IN ADR. Each ADR proceeding will involve a third-party neutral and deciding officials and may or may not involve counsel, depending on the procedure selected and agreement of the parties.

a. The neutral is an individual who, with respect to the issue in controversy, functions specifically to aid the parties in resolving the controversy. This person may be a Government employee or someone outside the Government. The ADRS can assist in the identification and selection of a neutral.

b. The Deciding Official is the individual designated by each of the parties who is responsible for and has authority to take action on the issue in controversy. For the Agency this may be the contracting officer, supervisor, or other management official who may grant relief or decide the issue. For the opposing party, the Deciding Official could vary depending upon the type of action.

c. Counsel, where representing the Agency in ADR proceedings, may serve as an advocate for, or as an advisor to the Agency's Deciding Official who is acting on behalf of the Agency's interests.

d. The parties will execute a written agreement with respect to each ADR procedure to be undertaken. The form and content of the agreement will depend upon the type and subject matter of the ADR proceeding. Generally, the agreement will include the method of ADR to be used, the time and location where the ADR will take place, designation of the parties in attendance and how selection and payment, if any, for a third-party neutral will be effected. Assigned Agency counsel must approve the agreement prior to the commencement of any ADR sessions, except agreements for the mediation of EEO complaints.

e. Each agreement to engage in arbitration must specify a maximum award that may be issued by the arbitrator and may specify other conditions limiting the range of possible outcomes. Each agreement to engage in arbitration must be approved in advance by the DRS or appropriate ADRS.

3.3. WHEN ADR IS NOT UTILIZED. A management decision not to use ADR, when unassisted negotiations have not been effective, will only be made after its possible use has been

fully evaluated and discussed between the Deciding Official and the appropriate ADRS or assigned legal counsel.

a. The decision not to use ADR must be approved by an official at least one level above the Deciding Official, after consultation with assigned legal counsel. The decision not to offer ADR in a contract dispute must also be coordinated with the DCMA General Counsel (or designee). A management decision not to use ADR will be explained in writing, citing the specific reasons why using ADR is inappropriate or impracticable in the situation.

b. This process does not cover arbitration of grievances covered under a negotiated Collective Bargaining Agreement.

3.4. EXPENSES. Expenses for the use of ADR are generally borne by the parties to the dispute, the same as if the matter were being resolved through litigation or formal dispute resolution procedures, although ADR is typically less expensive.

a. The written agreement for each ADR procedure to be undertaken will include appropriate provisions for the payment of any associated expenses.

b. Depending upon the type and subject matter of the dispute, third-party neutrals may be available at little or no cost; e.g., ASBCA Settlement Judges in contract disputes or MSPB and EEOC Settlement Judges in workplace disputes. Assistance in identifying appropriate third-party neutrals is available through the DRS, ADRS and assigned legal counsel.

3.5. TOOLS AND ADDITIONAL GUIDANCE. Additional considerations for resolving disputes involving contracts or contractual actions can be found in the DCMA Manual 2501-09. Furthermore, the process flow, risk control table, and DD Form 2815 can be found on the Resource Page.

GLOSSARY

G.1. DEFINITIONS.

ADR. Any procedure that is used as an alternative to litigation or formal administrative adjudicatory proceedings to resolve issues in controversy, including, but not limited to, facilitation, conciliation, partnering, mediation, fact finding, early neutral evaluation, mini-trials, arbitration, and the use of ombuds or any combination thereof. The term does not include unassisted negotiations.

Conflict Management. A systematic process used to proactively identify and manage, at the earliest stage possible, conflict that can lead to one or more disputes, for the purpose of reducing the incidence of disputes and increasing the likelihood that disputes that do arise may be resolved efficiently, effectively, and expeditiously. Techniques used in the process include, but are not limited to, structured unassisted negotiation (e.g., use of interest-based negotiation techniques), joint or collaborative problem-solving, and coaching.

DoD ADR Coordinating Committee. The group consisting of the DRS or designees of the DoD Components and, at the discretion of the Deputy General Counsel (Legal Counsel) or designee, other DoD officials with ADR-related responsibilities or representatives of DoD Component ADR programs, whose purpose is to promote among the DoD Components the exchange of information on ADR and conflict management program design and implementation.

DRS. A senior official designated and trained in accordance with the ADR Act that is responsible for the implementation of ADR within the agency ADR policy and training in ADR.

GLOSSARY

G.2. ACRONYMS.

ADR	Alternative Dispute Resolution
ADRS	Alternative Dispute Resolution Specialist
ASBCA	Armed Services Board of Contract Appeals
DD FORM 2815	Alternate Dispute Resolution (ADR) Report
DRS	Dispute Resolution Specialist
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
MSPB	Merit Systems Protection Board

REFERENCES

Collective Bargaining Agreement, “Defense Contract Management Agency and American Federation of Government Employees,” August 1, 2019
DCMA Director’s Policy Statement 005, “Policy Statement on Alternative Dispute Resolution,” August 19, 2020
DCMA Manual 2501-09, “Contract Claims and Disputes,” March 26, 2018
DoD Directive 5105.64, “Defense Contract Management Agency (DCMA),” January 10, 2013
DoD Instruction 5145.05, “Alternative Dispute Resolution (ADR) and Conflict Management,” May 27, 2016
Executive Order 12988, “Civil Justice Reform,” February 5, 1996
Public Law 104-320, Section 571, “The Administrative Dispute Resolution Act of 1996,” October 19, 1996
United States Code, Title 5