



DEFENSE LOGISTICS AGENCY
DEFENSE LOGISTICS SUPPORT COMMAND
8725 JOHN J. KINGMAN ROAD, SUITE 2533
FORT BELVOIR, VIRGINIA 22060-6221

JUL 7 1999

IN REPLY
REFER TO

DLSC-P
PROCLTR 99-08

MEMORANDUM FOR PROCLTR DISTRIBUTION LIST

SUBJECT: Alternative Dispute Resolution (ADR), Defense Logistics Agency (DLA) Directive 5145.1

The revised DLA Directive 5145.1, "Alternative Dispute Resolution (ADR) Program," and accompanying cover letter by the Director, DLA (Attachment), are provided by this PROCLTR to remind contracting personnel of ADR's continuing importance to the Agency. DLA is committed to considering the use of ADR in every dispute or controversy. ADR advances our strategic goals of supporting our customers, achieving the revolution in business affairs, enabling our workforce, and partnering with industry. It can be an effective cost reduction tool, and continues to play an important role in acquisition reform. I endorse the views of the Director stated in his letter, and stress my expectation that ADR be used on a regular basis in resolving contract disputes.

FAR 33.214(c) states that contracting officers may use ADR procedures at any time they have authority to resolve the issue in controversy. Note that the Directive states (Section E.3.) that when unassisted negotiations are not effective, ADR must be considered. A management decision *not* to use ADR must be made by an official at least one level above the deciding official and explained in writing. Although all forms of ADR should be considered, you should give special consideration to the use of mediation. Contact the ADR Specialist at your activity, located in the Office of Counsel, for help in determining when ADR is appropriate, and how it can best be used.

Your Office of Counsel is also responsible for providing ADR training. If your activity has not received this training, please contact your Office of Counsel so this can be arranged. That office also has copies of videotaped training which are available for those who have missed previous training opportunities. These training sessions are a great way to learn about ADR and help to institutionalize this approach to dispute resolution.

This PROCLTR is effective immediately and expires, for record keeping purposes, upon distribution to all contracting personnel. Should you have any questions, please direct them to Ms. Helen Bailey, DLSC-PPP, (703) 767-1374, DSN 427-1374, or email to helen_bailey@hq.dla.mil.

Attachment

WILLIAM J. KENNY
Executive Director
Procurement Management





DEFENSE LOGISTICS AGENCY
HEADQUARTERS
8725 JOHN J. KINGMAN ROAD, SUITE 2533
FORT BELVOIR, VIRGINIA 22060-6221

FEB - 5 1999

IN REPLY
REFER TO

GC

MEMORANDUM FOR DLA EXECUTIVE TEAM

SUBJECT: DLA Directive 5145.1 on Alternative Dispute Resolution

I am providing you a copy of the new DLA Directive 5145.1 on Alternative Dispute Resolution (ADR). This DLAD revises the previous regulation on the same subject.

DLA is committed to resolving disputes early and effectively. Alternative Dispute Resolution in general, and mediation particular, are widely recognized by Government, business and legal communities as effective and economical ways to resolve disputes. DLA is committed to considering use of ADR in every dispute or controversy. In addition to supporting Departmental and Administration policy, ADR advances three DLA strategic goals: supporting our customers, the revolution in business affairs, and partnering with industry. We should discourage more formal and adversarial dispute resolution processes when less formal and more consensual methods will fairly resolve the controversy.

DLA has made significant progress in understanding and using ADR to resolve disputes since the previous DLA regulation on ADR was issued in 1992. For example, the DLA RESOLVE Program has led to a notable reduction in formal EEO cases because of early resolution through mediation. We need to build on the existing momentum and aggressively import ADR thinking to all types of dispute.

Of note, the new Directive states that if unassisted negotiations are not effective, ADR must be considered and a management decision *not* to use ADR must be made by an official at least one level above the deciding official and explained in writing. Special consideration should be given to mediation because of its many benefits.

I count on your support to advance DLA's policy in this important area. The Office of Counsel, as the designated ADR office for the agency, can give you whatever assistance you may need.

HENRY T. GLISSON
Lieutenant General, USA
Director

Attachment

ALTERNATIVE DISPUTE RESOLUTION (ADR) PROGRAM
[This publication has been revised significantly
and must be reviewed in its entirety.]

A. REFERENCES

1. DLAR 5145.1, Alternative Dispute Resolution (ADR) Program, 29 May 92, superseded.
2. Administrative Dispute Resolution Act (ADRA) of 1996, Pub. L. No. 101-552, as amended by Pub. L. No. 104-320.
3. DoD Directive 5145.5, Alternative Dispute Resolution.

B. PURPOSE. This directive:

1. Supersedes reference A1.
2. Implements references A2 and A3, above, to encourage the expanded use of ADR within the Defense Logistics Agency (DLA).

C. APPLICABILITY AND SCOPE. This directive applies to HQ DLA and all field activities, and to all issues in controversy, as defined herein. It provides internal policy only and does not confer any rights on parties to an issue in controversy with DLA. Use of ADR for bargaining unit employees will be subject to local negotiation.

D. DEFINITIONS

1. Alternative Dispute Resolution (ADR). Any procedure (for example, mediation, conciliation, facilitation, fact-finding, use of ombuds, early neutral evaluation, mini-trials, settlement judge, summary trial with binding decision at the Armed Services Board of Contract Appeals (ASBCA), arbitration, or any combination thereof) or any other method to which the parties agree for resolving issues in controversy, except the term does not include unassisted negotiations.

2. Alternative Dispute Resolution Specialist (ADRS). An official designated by the Commander or head of a DLA activity, responsible for the implementation of the ADR program for that activity and its subordinate elements.

3. Arbitration. An ADR technique agreed to by the parties, in which the

issue in controversy, or part of it, is decided by a third party neutral. Arbitrations shall be conducted in accordance with the ADRA. Each arbitration agreement shall specify a maximum award that may be issued by the arbitrator and may specify other conditions limiting the range of possible outcomes. Any use of arbitration must be approved in advance by the General Counsel. Arbitration does not include summary trial with binding decision or any other form of binding ADR conducted by the ASBCA under the Contract Disputes Act. Also this Directive does not cover arbitration of grievances under a negotiated labor-management agreement.

4. Deciding Official. The person responsible for and with the authority to take the action in which an issue in controversy has arisen, for example, the Contracting Officer, supervisor or other management official having authority to grant relief or decide the issue.

5. Dispute Resolution Specialist (DRS). The senior official within the agency responsible for the development and implementation of the ADR program.

6. Issue in Controversy. An issue which is material to a decision concerning an administrative program of an agency, and with which there is a disagreement between the agency and persons who would be substantially affected by the decision, or between persons who would be substantially affected by the decision but shall not extend matters specified under the provisions of sections 2302 and 7121(c) of title 5 (prohibited personnel practices, Hatch Act violations and matters already subject to Collective Bargaining Agreements).

7. Neutral. An individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy. This individual may be a Government employee or someone outside the Government.

E. POLICY

1. The use of ADR usually results in faster, less expensive, and less contentious resolution of issues in controversy. Therefore, ADR techniques shall be used as an alternative to litigation or formal administrative procedures to the maximum extent practicable.

2. It is DLA policy to consider the use of ADR in every situation where unassisted negotiations have not proved effective. This includes the use of ADR as provided for in this Directive and the use of ADR as 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 and the ASBCA.

3. 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 ADRS 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 --after consultation with legal counsel. A management decision not to use ADR (whether or not ADR has been specifically requested) shall be explained in writing, citing one or more of the reasons in Section 572(b) of the ADRA or other specific reasons that make the use of ADR inappropriate or not practicable.

4. While all forms of ADR should be considered and used if appropriate, special consideration shall be given to the use of mediation. This process, 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 disputes.

F. RESPONSIBILITIES

1. The General Counsel shall:

- a. Serve as the DLA's DRS.
- b. Administer the provisions of this Directive and furnish guidance and assistance in its implementation.
- c. Approve the use of arbitration (except for arbitration under the Federal Labor Relations Act) before the execution of any agreement to engage in this form of ADR.
- d. Establish an ADR Practice Group.

2. The DRS or designee shall:

- a. Develop ADR policies, procedures, and initiatives, coordinating and promoting them within DLA.
- b. Monitor implementation, evaluate program execution and results, and submit periodic reports describing DLA's use of ADR.
- c. Determine the appropriate and necessary ADR training.
- d. Represent DLA on the DoD ADR Coordinating Committee.

3. The Heads of HQ DLA principal staff elements or business areas shall implement this Directive by promoting the greater use of ADR within their organizations and for the functions assigned to them.

4. Commanders and Heads of DLA Primary Level Field Activities shall:

- a. Ensure ADR techniques are used to the maximum extent practicable, to avoid the unnecessary expenditure of time, money, and resources on litigation.

b. Periodically review the ADR program within their activities, and take steps to foster the greater use of ADR, including the elimination of unnecessary barriers.

c. Designate an ADRS.

d. Provide ADR training to selected personnel.

5. The ADRS shall:

a. Administer the ADR program for that activity.

b. Periodically provide the DLA DRS with information on the status of the ADR program in that activity.

c. Forward copies of any activity supplements to this Directive to the DRS.

6. The ADR Practice Group, chaired by the Associate Counsel for Alternative Dispute Resolution, shall assist the Commanders, DRS and the ADRSs in carrying out their ADR responsibilities, and facilitate the sharing of ADR information and resources throughout DLA.

G. EFFECTIVE DATE. This publication is effective immediately.

H. INFORMATION REQUIREMENTS. (Reserved for future use.)

BY ORDER OF THE DIRECTOR



NORMAN B. HODGES III

Colonel, USA

Headquarters Complex Commandant

COORDINATION: CAHS, CA, FO, DCMC, DLSC