

Rule 204

ALTERNATIVE DISPUTE RESOLUTION

(a) Availability of ADR procedures. The Board will make its services available for ADR proceedings in contract and procurement matters involving any agency, regardless of whether the agency uses the Board to resolve its Contract Disputes Act appeals.

(1) ADR subsequent to docketing of case at the Board. Parties are encouraged to consider the feasibility of using ADR as soon as their case is docketed. If, however, at any time during the course of a Board proceeding, the parties agree that their dispute may be resolved through the use of an ADR technique, the panel chairman may suspend proceedings for a reasonable period of time while the parties and the Board attempt to resolve the dispute in this manner. The use of an ADR technique will not toll any relevant statutory time limit for deciding the case.

(2) Other ADR. Upon request, the Board will make a Board Neutral available for an ADR proceeding involving any agency in any contract or procurement matter at any stage of a procurement, even if no contracting officer decision has been issued or is contemplated. To initiate an ADR proceeding, the parties shall jointly request the ADR in writing and direct such request to the Office of the Clerk of the Board. For agencies other than GSA, the Board will provide ADR services on a reimbursable basis.

(b) Conduct of ADR.

(1) Selection of Board Neutral. If ADR is agreed to by the parties and the Board, the parties may request the appointment of one or more Board judges to act as a Board Neutral or Neutrals. The parties may request that the Board's chairman appoint a particular judge or judges as the Board Neutral, or ask the Board's chairman to appoint any judge or judges as the Neutral. If, when ADR has been requested for a case that has already been docketed with the Board, as provided in subparagraph (a)(1) of this rule, the parties may request that the panel chairman serve as the Board Neutral. In such a situation, if the ADR is unsuccessful, (i) if the ADR has involved mediation, the panel chairman shall not retain the case, and (ii) if the ADR has not involved mediation, the panel chairman, after considering the parties' views, shall decide whether to retain the case.

(2) Retention and confidentiality of materials. The Board will review materials submitted by a party for an ADR proceeding, but will not retain such materials after the proceeding is concluded or otherwise terminated. Material created by a party for the purpose of an ADR proceeding is to be used solely for that proceeding unless the parties agree otherwise. Parties may request a protective order in an ADR proceeding in the manner provided in Rule 112(h).

(c) Types of ADR. ADR is not defined by any single procedure or set of procedures. The Board will consider the use of any technique proposed by the parties which is deemed to be fair, reasonable, and in the best interest of the parties, the Board, and the resolution of contract disputes. The following are examples of available techniques:

(1) Mediation. The Board Neutral, as mediator, aids the parties in settling their case. The mediator engages in ex parte discussions with the parties and facilitates the transmission of settlement offers. Although not authorized to render a decision in the dispute, the mediator may discuss with the parties, on a confidential basis, the strengths and weaknesses of their positions. No judge who has participated in discussions about the mediation will participate in a Board decision of the case if the ADR is unsuccessful.

(2) Neutral case evaluation. The parties agree to present to the Board Neutral information on which the Board Neutral bases a non-binding, oral, advisory opinion. The manner in which the information is presented will vary from case to case depending upon the agreement of the parties. Presentations generally fall between two extremes, ranging from an informal proffer of evidence together with limited argument from the parties to a more formal presentation of oral and documentary evidence and argument from counsel, such as through a mini-trial.

(3) Binding decision. One or more Board judges render a decision which, by prior agreement of the parties, is to be binding and non-appealable. As in the non-binding evaluation of a case by a Board Neutral, the manner in which information is presented for a binding decision may vary depending on the circumstances of the particular case.

(4) Other procedures. In addition to other ADR techniques, including modifications to those listed above, as agreed to by the Board and parties, the parties may use ADR techniques that do not require direct Board involvement.

(5) Selective use of standard procedures. Parties considering the use of ADR are encouraged to adapt for their purposes any provisions in Part I of the Board's rules which they believe will be useful. This includes but is not limited to provisions concerning record submittals, pretrial discovery procedures, and hearings.

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