

Alternative Dispute Resolution

A GUIDE FOR CONTRACTING

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**DeCA ALTERNATIVE DISPUTE RESOLUTION PROGRAM
A GUIDE FOR CONTRACTING**



BY ORDER OF THE DIRECTOR

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AUTHORITY: DeCA's Alternative Dispute Resolution Program is established in compliance with the Contract Disputes Act of 1978, the Administrative Dispute Resolution Act of 1990, and the Administrative Disputes Act of 1996.

MANAGEMENT CONTROLS: This Handbook does not contain management control provisions.

APPLICABILITY: This handbook applies to the Defense Commissary Agency (DeCA) activities.

HOW TO SUPPLEMENT: This Handbook will not be supplemented without prior authorization from HQ DeCA/AM.

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SUMMARY: This handbook provides guidance and policy, assigns responsibilities and defines reporting requirements for DeCA's Alternative Dispute Resolution Program for contracting.

SUPERSEDES: NA

OFFICE OF PRIMARY RESPONSIBILITY (OPR): HQ DeCA/AM

COORDINATORS: HQ DeCA/IM/RM/GC/IG/AM/DP/EE/IR/PA/SA/DF/DO/PL/ARBU/CBU/EBU/FM BU/ITBU/MBU/PABU/TBU/REGIONS

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ALTERNATIVE DISPUTE RESOLUTION A GUIDE FOR CONTRACTING

1. INTRODUCTION

Alternative Dispute Resolution (ADR) is defined as any procedure/technique that is chosen voluntarily and used to resolve issues in controversy, including but not limited to, conciliation, facilitation, mediation, fact-finding, mini-trials, arbitration, and use of ombuds, or any combination thereof. The procedures/techniques emphasize consensual problem solving and flexibility; the parties should be able to fashion their own procedures instead of having standard rules forced on them.

The Defense Commissary Agency's (DeCA) policy is to use ADR as an alternative to litigation or formal administrative procedures to the maximum extent practicable. (See FAR 33.204.) Rather than replace litigation, ADR processes off-load those cases that may not belong in litigation. By using these techniques, the entire issue in controversy or a portion of the issue in controversy may be resolved. DeCA's goal is to resolve disputes and conflicts at the earliest feasible stage, by the fastest and least expensive method possible, and at the lowest possible organizational level prior to litigation. Unless specified otherwise, every conflict and issue in controversy, regardless of the subject matter, is a potential candidate for ADR. All contracting personnel shall consider and encourage the use of ADR to resolve conflicts and issues in controversy, when appropriate.

2. WHEN WOULD ADR BE APPROPRIATE?

The Federal Acquisition Regulation (FAR) 33.214(c) advises that: "ADR procedures may be used at any time that the contracting officer has authority to resolve the issue in controversy"; however, not all cases are appropriate for ADR use. ***The contracting officer's decision to use ADR should not be the result of some "checklist" approach, rather, it should reflect a sound judgment, after an evaluation of all factors, including cost, that ADR offers the best approach to resolving the dispute.*** To assist with this evaluation, the contracting officer should contact the DeCA Office of General Counsel (GC).

a. FACTORS WHICH MAY FAVOR USE OF ADR:

- (1) The parties are seeking a substantial level of control and flexibility over the resolution and over the relief obtained, e.g., cases in which the result is best a "business" consideration, not a legal consideration.
- (2) The parties have, or expect to have, an ongoing relationship because it is desirable or important.
- (3) Communication between the parties has reached an impasse and peripheral issues have developed which preclude settlement.
- (4) The parties desire frank discussions of the strengths and weaknesses of their respective positions with a Neutral who is experienced in contract matters.
- (5) The case appears to be headed to litigation.

evaluation. (6) The dispute involves technical or factual issues that lend themselves to expert evaluation.

(7) The parties disagree significantly about the value of their case.

(8) Upper management of one or more parties could be better informed about the real strengths and weaknesses of the case.

(9) The parties are seeking an alternative to extensive and expensive discovery.

(10) The case is primarily a factual dispute (in a well-settled area of the law).

quantum. (11) Agreement to entitlement exists; however, the parties are unable to agree to

(12) Extenuating factors make avoiding an adverse precedent desirable.

b. FACTORS WHICH MAY WEIGH AGAINST THE USE OF ADR:

proceeding. (1) Case requires a definitive or authoritative precedent.

(2) Dispute significantly affects persons or organizations who are not parties to the

(3) The case involves or may bear upon significant questions of Government policy.

decisions. (4) When it is of special importance to maintain consistent results among individual

(5) A full public record of the proceeding is important, and an ADR proceeding cannot provide such a record.

(6) The agency must maintain continuing jurisdiction over the matter and an ADR proceeding would interfere with the agency's fulfilling that requirement.

(7) A sufficient level of trust between the parties has not been established.

(8) Case can be more quickly disposed of by an expedited procedure at the Armed Services Board of Contract Appeals (ASBCA) or Court of Federal Claims.

(9) Case is likely to be settled through unassisted negotiations.

c. FACTORS WHICH PREVENT THE USE OF ADR:

(1) When a fraud OR criminal investigation relates to the contract in dispute, ADR shall not be used.

(2) Other directive(s) preclude the use of ADR.

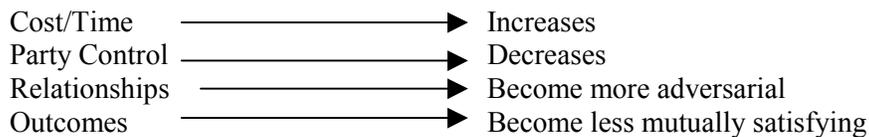
3. SOME FAMILIAR AND NEW ADR PROCEDURES

The contracting officer and the contractor can tailor any ADR procedure/technique, at any time during the process, to meet their needs. It is important for the parties using ADR to decide on an initial framework they believe will work for them and, when one is used, to communicate this to the Neutral who will be assisting them. It must be emphasized that the parties can design any process including one which gives a Neutral as much or as little authority as they believe will work for them. The initial process can be changed at any time and as often as the parties desire as long as they mutually agree. Figure 3-1 below depicts the effects various ADR procedures/techniques have on cost and time, control the parties have, relationships between parties, and outcomes. Some of the ADR procedures/techniques shown on the chart that may be used within DeCA, either alone or in combination with others, are briefly described following the chart.

ADR Continuum

| | | | | | |
|--|---|---|---|--------------------------------|--|
| P r e v e n t i o n | Unassisted Procedures | Third Party Assisted Procedures | Third Party Decision Making Procedures | | L i t i g a t i o n |
| | Collaborative Problem Solving Positional Negotiation Interest-Based Negotiation | Conciliation Facilitation Fact-finding Mediation Mini-Trial Neutral Evaluation Partnering | Advisory | Binding | |
| | | | Disputes Panel | Arbitration | |
| | | | Non-Binding Arbitration | Med Arb Private Judging | |

As you move from left to right on the continuum



(Figure 3-1)

a. **POSITIONAL (TRADITIONAL) NEGOTIATION** -- A negotiation technique of successively taking—and then giving up—a sequence of positions. Parties continue to make offers and counter-offers, argue for their own positions, and make concessions to reach a compromise that is acceptable to all parties.

b. **INTEREST-BASED NEGOTIATION** -- A negotiation technique of educating all parties about the needs and concerns (interest) of each, followed by joint problem solving to identify the best way of meeting all or most of the interests of both parties.

c. **COLLABORATIVE PROBLEM SOLVING** -- Parties see an issue as a joint problem and work cooperatively to find a mutually acceptable solution.

d. **CONCILIATION** — A process in which a third party, called a conciliator, restores damaged relationships between disputing parties by bringing them together, clarifying perceptions, and pointing out misperceptions.

e. **FACILITATION** -- A third party provides procedural assistance to a group or team to enhance information exchange and promote effective problem-solving and decision-making.

f. **FACT-FINDING** — An investigative process in which a neutral “fact-finder” independently determines facts for a particular dispute after the parties have reached an impasse. The intent of this process is to resolve disputed facts, thereby making further negotiations more likely to be productive.

g. **MEDIATION** -- A process in which an impartial third party neutral, called a “mediator,” helps disputing parties resolve their differences and negotiate a mutually agreeable settlement. A mediator serves as an “agent of reality” to help the parties frame the issues, structure negotiations, and recognize self interests as well as the interests of the other side. Mediation emphasizes problem solving. Unlike an arbitrator or judge, a mediator has no power to make a decision; any decision made must be reached by the parties themselves.

h. **MINI-TRIAL** -- A structured settlement process in which each side presents a highly abbreviated summary of its case before senior representatives of each party who are authorized to settle the case. Following the presentations, the senior representatives seek to negotiate a settlement. A neutral third party presides over the proceedings, and can mediate with the senior representatives or render an advisory opinion if asked to do so. (It is not a trial since there are no judges, no testimony from witnesses and no rules of evidence.) The Armed Services Board of Contract Appeals (ASBCA) and the U.S. Court of Claims uses this process often to settle cases that reach them.

i. **NEUTRAL EVALUATION** -- Often called “early neutral evaluation” because it works best early in a dispute. A neutral third party, usually with substantial substantive expertise, assesses the relative merits of the parties’ cases and provides a non-binding evaluation that can give the parties a more objective assessment of their positions, thereby increasing the chances that further negotiation will be productive. The process usually involves informal oral or written presentations to the neutral of the highlights of the parties’ cases and positions.

j. **ARBITRATION** -- A relatively formal process, closely resembling formal litigation, in which each party presents its case, usually at a hearing conducted by a person, i.e., arbitrator/neutral, or panel of three or more neutrals who hear the facts and arguments and, like a judge, renders a written decision. The decision may be binding or non-binding. **Within DeCA, the use of binding arbitration in contracting is not authorized.**

4. **CONTRACTING OFFICER RESPONSIBILITIES.** Under this program, the contracting officer will:

a. Consult with GC before discussing the use of ADR with a contractor.

b. Coordinate, as necessary, with the appropriate agency personnel. For example, within the CBU, the contracting officer may be required to obtain approval of their supervisor before initiating an ADR action.

c. Assist in selecting a Neutral and submit a request for Approval of a Proposed Neutral. (See paragraph 7.)

d. Negotiate and prepare the ADR agreement to implement the ADR procedure that will be followed throughout the proceedings. (See paragraph 8.)

e. Assemble and ensure that pertinent documents surrounding the issue in controversy are provided to the Neutral, when used, and the contractor. However, if ADR is used in a bid protest dispute, the contracting officer is not required to furnish any documentation beyond what is allowed by the FAR.

f. Within 30 days after the conclusion of a **third party assisted ADR proceeding**, submit a report on the outcome of the ADR procedure to the appropriate ADR coordinator. This report will include the contracting activity's assessment of the ADR process. (See paragraph 10.)

g. Contracting officers and contractors are encouraged to contact the GC with any questions or concerns they may have regarding this program.

h. Perform other duties mentioned in other paragraphs of this handbook.

5. WHAT IS CONFIDENTIAL IN ADR?

a. Section 4 of the Administrative Dispute Resolution Act (ADRA) of 1996 establishes narrow confidentiality protections for certain communications made to or generated by a Neutral. These provisions do not provide any new confidentiality protections for communications made between the parties themselves. Written agreements to enter into an ADR proceeding, or a final written agreement or arbitrator award reached as a result of an ADR proceeding, are not, under the terms of the ADRA of 1996, confidential. The application of the ADRA's confidentiality protections to communications between (1) a party and a Neutral, (2) a party and a party, and (3) the Neutral and the parties, requires separate analysis and may yield different results.

b. The assigned Neutral shall not discuss the merits of the issue in controversy raised during the ADR proceedings with anyone. These measures are intended to facilitate full, frank, and open discussion and presentations during the ADR proceeding. If, at any time during the process, the Neutral finds that ADR is inappropriate, the matter shall be addressed to the disputing parties and the ADR process shall be terminated.

c. GC shall review any questions concerning confidentiality.

6. WHO PAYS EXPENSES?

a. The issue of expenses shall be specified in the initial ADR agreement between the parties. Normally, each party will be responsible for their own costs, i.e., witnesses and experts. (The contracting officer shall obtain funding for the government portion of ADR expenses.)

b. Attorney Fees and Costs. Generally, contractors are not entitled to recover attorney fees and costs incurred under ADR proceedings prior to an issuance of the contracting officer's final decision. If ADR proceedings are conducted after a final decision is issued, the contracting officer shall consult with GC on the payment of attorney fees and costs.

7. HOW TO REQUEST AND SELECT A NEUTRAL.

After determining both the appropriateness of ADR and which ADR method to use, the next step when required is to select an ADR neutral person who is sometimes called a "third party" neutral. In selecting a neutral, the contracting officer should consult with the ADR Specialist (ADRS) to locate and determine who might be available to serve as an ADR neutral.

a. The parties to the dispute should jointly consider the role they wish the Neutral to play in the ADR proceedings. This determination can be made with the assistance of the ADR Neutral.

b. After consulting with GC and obtaining agreement from the contractor on the selection of a neutral, the contracting officer should submit a request for approval of a Neutral to GC. The request should have the required information, as provided at Appendix A, Request for Approval of a Proposed Neutral.

c. The contracting officer should include the desired time frame and completion date for the ADR process in the request. This request is not to be construed as a binding document. Rather, it is meant as a certification of qualification from GC of the proposed neutral. GC will evaluate the neutral based on the criteria in paragraph 7d below.

d. Suitable ADR neutrals should:

- (1) Meet the requirements of the relevant federal and state court rules for neutrals.
- (2) Be unbiased and not seek to advance his or her own interests/agenda.
- (3) Be able to deal fairly with the parties and be reasonably available to the parties.
- (4) Not have a conflict of interest because of an inappropriate relationship with one or more of the parties involved (Note: An inappropriate relationship occurs when it might preclude impartiality.)
- (5) Be adequately trained and knowledgeable in the ADR method to be used.
- (6) Have adequate experience in the ADR method to be used. Consider the complexity of the cases, the number of cases, and the amount of money involved.
- (7) Have adequate expertise in the issues or facts comprising the controversy.

8. WHAT'S IN AN ADR AGREEMENT?

The contracting officer and the contractor shall agree in advance and in writing on the ADR procedure to be used. Selected guidelines, procedures, and requirements implementing the ADR procedure shall be included in this written agreement. The Neutral, if one is used, can assist the disputing parties to resolve the procedural issues and prepare the ADR agreement before proceedings are initiated. The ADR proceedings will commence only after a signed ADR agreement between the contracting officer and the contractor is executed. At a minimum, the agreement should contain the following information (See Appendix B, a sample of an ADR agreement):

- a. Identification of the participants.
- b. The ADR process to be used and the parties agreement to use the selected process.
- c. Required certification requirements. (See FAR Subpart 33.207.)
- d. Definition of the Neutral's role, i.e., mediator, advisor, arbitrator, facilitator, settlement judge, or a combination or multiple function (hybrid role).
- e. The document submission schedule.
- f. The use of attorneys and expert witnesses.
- g. The overall time needed to complete the ADR process, e.g., this may be stated as 60 to 90 days, not to exceed 120 days from the date a Neutral was requested. Allow adequate time for document exchange and GC review.
- h. Whether discovery will be used and the scope of discovery.
- i. The procedure for the conduct of the ADR proceedings and the form of the presentation of each party's case (e.g., whether the parties will be able to raise evidentiary objections during the proceedings; whether the presentation will be in narrative form through attorneys, expert witnesses, depositions, demonstrative evidence, and/or oral arguments).
- j. Confidentiality requirements.
- k. The use of information developed in the ADR proceedings in subsequent litigation.
- l. Written expression of the issues to be resolved and if a decision is to be rendered.
- m. Preservation of the parties' rights with regard to further legal action.
- n. Clarification of the right of either party to withdraw and proceed with formal litigation.
- o. Date, time, and place of the ADR sessions.

p. Provision for payment of expenses. (Contracting officer shall obtain funding for government portion of ADR expenses.)

9. ARE DOCUMENTS INVOLVED?

The ADR process is intended to facilitate the communication and settlement of disputes. Sufficient documents should be made available to facilitate settlement. Documents should also be made available to enable the Neutral, when used, to understand the respective positions of the parties and the related contractual provisions surrounding the issue(s) in controversy. Furthermore, during the course of ADR, additional documents may be required. However, if ADR is used in a bid protest dispute, the contracting officer is not required to furnish any documentation beyond what is allowed by the FAR.

10. CONCLUSION/REPORTING REQUIREMENTS. Within 30 days after the conclusion of each **third party assisted ADR procedure**, the contracting officer shall provide the appropriate ADR coordinator with the information requested at Appendix C, DD Form X380. **No report is required when unassisted ADR procedures such as, positional (traditional) negotiation, interest based negotiation, or collaborative problem solving, etc. are used to resolve an issue(s) in controversy.**

Appendix A

Request for Approval of a Proposed Neutral

1. Solicitation/Contract Number:
2. Contracting Facility:
3. Names and Telephone/Fax Numbers of Contracting Officer, Contracting Officer's Representative, Attorney from the Office of General Counsel (GC), and Other Key Government Participants:
4. Contractor's Name, Address, and Telephone/Fax Numbers:
5. Proposed Neutral's name, phone number, and address:
6. Brief Work Description and Issue(s) in Controversy or Claim (include, if possible, a brief description of each party's position):
7. Dollar Amount in Controversy:
8. Status of the Issue(s) in Controversy (i.e., has a claim been submitted or a final decision rendered?):
9. Schedule or Time Frame for Completion of the ADR Procedure (allow adequate time for document assembly and GC's review):

Submit To:
Fax Number:
e-mail:

Contracting Officer

Appendix B

NOTE: This sample agreement is meant to serve only as a guide for structuring ADR agreements. Based on mutual agreement by the contracting officer and the contractor, changes may be made in any of the terms set forth in this sample agreement.

Alternative Dispute Resolution Agreement
Between the
Defense Commissary Agency
(Facility, City, and State)
and
(Contractor, City, and State)

BACKGROUND

1. On _____ (date) the parties entered into Contract No. _____ (or) the DeCA issued Solicitation No. _____ for _____ (provide description of work) at the DeCA _____ (location of DeCA facility).
2. The _____ (name of contractor) has presented an issue in controversy to the contracting officer for resolution. (State hereafter, with some specificity, the matter in dispute.)
3. The Contracting Officer and _____ (name of contractor) wish to resolve the referenced issue in controversy through an Alternative Dispute Resolution (ADR) procedure rather than the Disputes Clause of the contract or formal litigation. (Use the following certification when the issue in controversy has been submitted as all or part of a claim, as authorized by the Federal Acquisition Regulation (FAR), Subpart 33.207, Contractor certification, regardless of the claim amount. This certification is not required if the issue in controversy has not been submitted as a claim.)

I, _____ (name and title of contractor's authorized representative), certify that the claim is made in good faith; that the supporting data is accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the contractor.

(Use the following statement if the issue in controversy is not all or part of a claim.)

I, _____ (name and title of contractor's authorized representative), hereby waive the requirement for the Contracting Officer to issue a Contracting Officer's final decision until not more than 60 calendar days after the completion of the ADR proceedings. The parties agree to defer the Contracting Officer's issuance on this matter until _____ (date).

4. DeCA and _____ (name of contractor) support ADR because it provides the disputing parties with a voluntary means of attempting to resolve the issue in controversy without a lengthy and costly proceeding before the Board of Contract Appeals or the Court of Federal Claims.

Terms of the ADR Agreement

The parties mutually agree that:

1. DeCA and _____ (name of contractor) shall voluntarily engage in a non-binding ADR procedure.
2. The purpose of the ADR procedure shall be to assist the parties in the resolution of the issue in controversy that would otherwise be resolved pursuant to the Disputes Clause of the contract and the traditional litigation process. It is agreed that each disputing party shall have the opportunity to present its position in the ADR proceedings and will negotiate in good faith.
3. Each party shall have a representative present who is authorized to settle the issue in controversy, or have immediate access to such an individual.
4. The disputing parties agree that _____ (Name of Neutral) shall serve as the Neutral to the disputing parties.
5. For purposes of establishing a framework for the ADR procedure, the parties agree to the following regarding certain general rules, pre-hearing submissions to the Neutral, and the ADR proceedings:
 - a. The Neutral shall preside over, control the ADR proceedings, and take an active role throughout the ADR proceedings to promote a fair settlement. Unless instructed otherwise, the Neutral will act as Settlement Judge. (Include here any special instructions for the Neutral.)
 - b. There shall be no ex parte communication with the Neutral regarding substantive issues, except as may be initiated by the Neutral during the ADR proceedings pursuant to the agreement of the parties.
 - c. At the option of the parties, and no later than _____ (provide a date), the disputing parties shall simultaneously exchange and provide to the Neutral copies of their respective position papers. The papers shall set forth a concise description of the issue in controversy and the grounds for entitlement and quantum. The parties shall also provide a listing of the persons who will make statements at the proceeding.
 - d. Discovery may/may not (select one) be used during the ADR proceedings. If discovery is used, the scope shall be limited to _____ (state with some specificity the scope of the discovery authorized).
 - e. Attorneys will/will not (select one) be present during ADR procedures.
 - f. The Neutral shall actively attempt, during the course of the ADR process, to assist the disputing parties in an effort to reach a satisfactory resolution of the issue in controversy. The Neutral is authorized to: (1) conduct both joint and separate ex parte meetings and caucus with the disputing parties; (2) make oral recommendations and suggestions for settlement; (3) comment on possible strengths and weaknesses of the parties' positions or case; and (4) if authorized, issue a non-binding decision based on the proceedings.

The Neutral may/may not (select one) be present during negotiations between the parties. Confidential information presented to the Neutral in ex parte discussions will not be disclosed to the other party by the Neutral without the disclosing party's permission.

g. The ADR proceeding is to be held at _____ (location).

h. The presentations to the Neutral shall be informal. The rules of evidence shall not apply, and presenters may provide statements in the narrative. Attorneys, expert witnesses, depositions, demonstrative evidence, and/or oral argument may be used.

i. If full disposition of all of the issues in controversy is not reached during ADR proceedings, the parties may proceed under the Disputes Clause of the contract or, for bid protests, under the provisions of FAR Subpart 33.1 and DeCA Acquisition Regulation Subpart 33.1.

j. All ADR proceedings are private, including but not limited to hearing and mediation. The Neutral, the parties, and their witnesses, authorized representatives, and attorneys shall be permitted to attend the ADR proceedings. Other persons shall attend only with the permission of both parties and/or with the consent of the Neutral. The Neutral may make notes that will be destroyed upon completion of the ADR proceedings.

6. No transcript or recording shall be made of any portion of the proceedings. All aspects of the ADR procedure, including and without limitation to, any statements or oral presentations made between or among the parties and/or Neutral at the ADR proceedings, are inadmissible as evidence in any pending or future court or ASBCA proceeding that directly or indirectly involves the disputing parties and the issue in controversy. If settlement is reached as a result of the ADR procedure, all information that was presented at the proceedings may be used to justify and document the subsequent settlement. Furthermore, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use at the ADR hearing.

7. The Neutral shall treat the subject matter of this proceeding as confidential and shall refrain from disclosing any of the information exchanged to third parties. The Neutral is disqualified as a witness, consultant, or expert for either party in this or any other issue in controversy between the disputing parties arising out of performance of the contract. The Neutral is also disqualified as a judge if any of the issues in controversy proceed to formal litigation.

8. Each party has the right to terminate this agreement at any time for any reason whatsoever.

9. Each party is responsible for all expenses incurred from this ADR procedure as prescribed by this agreement. In the event of a termination, as mentioned above, each party remains responsible for their expenses up to the point of the termination.

10. If settlement is ultimately reached as a result of ADR procedures, the resulting settlement agreement must be signed by a representative of _____ (the contractor) and the DeCA contracting officer with authority to bind their respective parties.

11. The persons authorized to settle for each party at the ADR are as follows:

Defense Commissary Agency
Contracting Officer _____
Date _____
Contractor _____
Name and Title of Contractor's Representative _____
Date _____
*Neutral _____
*Date _____

*Include signature block and date for the Neutral to complete only when the Neutral has the authority to settle the dispute.

APPENDIX D

DEFINITIONS

ALTERNATIVE DISPUTE RESOLUTION SPECIALIST (ADRS)---DeCA's General Counsel serves as the ADRS and is the proponent for establishing and implementing DeCA's ADR policy, plans, and guidance. The ADRS is also responsible for administering the ADR program.

ADR COORDINATOR---A individual, appointed by the ADRS, who serves as an advocate for the ADR process, but does not represent a particular side in a controversy or serve as a third-party neutral in a case he or she has processed.

THIRD-PARTY NEUTRAL --- A qualified individual, agreeable to both parties, who functions specifically to evaluate, facilitate, mediate, or arbitrate the settlement of a dispute. Often referred to as a "neutral", third-party neutrals can come from either the private or public sector.

ISSUE IN CONTROVERSY --- A material disagreement between the Government and the contractor which (1) may result in a claim or (2) is all or part on an existing claim.

OMBUDS--- An ombuds or ombudsman is a person rather than a procedure (and, therefore, is not included on the ADR continuum) in Figure 3-1). Most ombuds are grievance-handling officials in a government agency who investigate citizens'/customers' complaints against the agency. Depending on the outcome of the investigation, the ombuds may recommend relief or persuade the complainant that the government acted properly. When an investigation indicates the problem results from system failure, the ombuds may also propose reforms to the agency. These officials may use a variety of techniques, in addition to investigation, to resolve the complaints.