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NASA Policy Directive

NPD 2010.2C

Effective Date: March 06, 2003

Expiration Date: March 30, 2018

COMPLIANCE IS MANDATORY[Printable Format \(PDF\)](#)

Request Notification of Change (NASA Only)

Subject: Alternative Dispute Resolution (REVALIDATED with Change 1 - 4/5/13)

Responsible Office: Office of the General Counsel

CHANGE HISTORY

Chg#	Date	Description/Comments
1	04/5/2013	Update to comply with 1400 Compliance, with administrative changes, update applicable documents, and added Attachment A - Definitions and Attachment B - References.

1. Policy

a. It is NASA policy to:

(1) maintain a productive work environment in which disputes are settled quickly by voluntary use of alternative dispute resolution (ADR). Utilization of ADR procedures, that will help to resolve disputes at the earliest stage feasible, by the fastest and least expensive method possible, and at the lowest organizational level.

(2) Use ADR for the resolution of an issue in controversy that relates to an administrative program if the parties agree to such proceeding. ADR may also be used for the resolution of any claim within NASA's authority to award, compromise, or settle without the prior written approval of the Attorney General or designee. This policy does not affect the plenary authority of the Department of Justice over Federal litigation.

(a) ADR may not be appropriate under the following circumstances:

i. A definitive or authoritative resolution of the matter is required for precedential value, and ADR is not likely to be accepted generally as an authoritative precedent;

ii The matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and ADR would not likely serve to develop a recommended policy for the Agency;

iii Maintaining established policies is of special importance, consistency among individual decisions is important, and ADR would not likely reach consistent results among individual decisions;

iv The matter significantly affects persons or organizations that cannot be parties to the ADR proceeding;

v A full public record of the proceeding is important, and ADR cannot provide such a record; or

vi The Agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and ADR would interfere with the Agency's fulfilling that requirement.

b. Confidentiality is a critical component of ADR. The confidentiality provisions of the Administrative Dispute Resolution Act of 1996, as amended, (ADR Act) vary depending on such things as the type of ADR procedure used, the number of parties participating, and the issues involved. 5 U.S.C. § 574. Generally, a dispute resolution communication, as defined by 5 U.S.C. § 571(5), or any communication provided in confidence to a neutral, should not be disclosed. There are exceptions to this rule where disclosure would be permitted or required by law. In order to determine whether information should be disclosed or withheld, the advice of the General Counsel or, when the deciding official's place of duty is at a NASA Center or Component Facility, the Chief Counsel, should be sought. "In confidence" means that the information is provided either with the expressed intent that it not be disclosed or under circumstances creating the reasonable expectation that the information will not be disclosed.

2. Applicability

This NPD applies to NASA Headquarters and NASA Centers, including Component Facilities and Technical and Support Service Centers..

3. Authority

The Administrative Dispute Resolution Act of 1996, as amended, 5 U.S.C. §§ 571-584.

4. Applicable Documents and Forms

a. Grievance procedures, 5 U.S.C. § 7121.

b. The Interagency Alternative Dispute Resolution Working Group. <http://www.adr.gov/>.

5. Responsibility

a. The General Counsel is responsible for the following:

(1) Authorizing the use of arbitration in bid protests before the General Accountability Office and in contract disputes before the Armed Services Board of Contract Appeals; and

(2) Consulting with the Attorney General about the appropriate use of binding arbitration prior to Agency use.

b. The Deputy General Counsel serves as the Agency's Dispute Resolution Specialist (DRS) and is responsible for the following (The DRS and other employees involved in the implementation of the Agency's ADR policy will receive training on a regular basis that includes the theory and practice of negotiation, mediation, arbitration, or related techniques.):

(1) Directing the Agency's implementation of the ADR Act;

(2) Developing the Agency's policy on the use of ADR and case management; and

(3) Representing the Agency at the Interagency ADR Working Group.

c. The Director, Workforce Strategy Division, and Center Directors are responsible for the following:

- (1) Designating a senior official within their organization as the liaison to the DRS; and
- (2) Encouraging the use of ADR within their organizations in agreement with the DRS and this NPD.

d. The Assistant Administrator, Office of Procurement, is responsible for ensuring the use of ADR where required and encouraging the use of ADR.

e. The Associate Administrator for Equal Opportunity and Diversity, is responsible for ensuring the use of ADR where required and encouraging the use of ADR where appropriate.

f. Representatives of the parties should be knowledgeable about the chosen ADR process and intend to participate in good faith to resolve the dispute. Non-attorney representatives may participate in ADR proceedings. However, except as specified by procedures set forth in 29 CFR § 1614.105, NASA reserves the right to disapprove a non-attorney representative in proceedings where it has been determined that the subject area of the proceeding is so complex or specialized that only attorneys may adequately provide representation or assistance. The General Counsel or, when the deciding official's place of duty is at a NASA Center or Component Facility, the Chief Counsel, will make the determination to disapprove a non-attorney representative. "Deciding official" means the person within NASA with authority to resolve an issue in controversy on behalf of the Agency.

g. Neutrals can come from a variety of sources: from within the Agency; from within another Federal agency (Inter-Agency Program on Sharing Neutrals, known as "Shared Neutrals"); or from the private sector. A neutral will have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral may serve.

6. Delegation of Authority

a. The General Counsel is delegated authority to carry out the functions and exercise the authority vested in the Administrator by the Administrative Dispute Resolution Act of 1996, as amended, to take actions required or permitted as related to the use of arbitration and or binding arbitration. 5 U.S.C. §§ 575-581.

b. The Deputy General Counsel is delegated authority to carry out the functions and exercise the authority as the Agency DRS pursuant to § 3(b) of the Administrative Dispute Resolution Act of 1990, Pub. L. No. 101-552, as amended by Pub. L. No. 104-320. 5 U.S.C. §§ 571-584.

7. Measurement/Verification

Annual summaries of the number of attempted uses of ADR, including the type of dispute and the results, from Headquarters and Centers, including Component Facilities, shall be submitted annually to the DRS.

8. Cancellation

NPD 2010.2B, Alternative Dispute Resolution, dated March 6, 2003.

REVALIDATED APRIL 5, 2013, ORIGINAL SIGNED BY:

**/s/ Sean O'Keefe
Administrator**

Attachment A: DEFINITIONS

ADR means any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, fact-finding, minitrials, arbitration, and use of ombudspersons, or any combination thereof. However, except as specified by grievance procedures set forth in 5 U.S.C. § 7121, the use of binding arbitration requires authorization by the NASA General Counsel.

ADR proceedings are processes that supplement rather than limit other available Agency dispute resolution procedures. The use of ADR procedures to resolve issues in controversy is encouraged. An "issue in controversy" means an issue material to a decision concerning a NASA program and where there is disagreement between the Agency and persons who would be substantially affected by the decision.

A neutral serving as a conciliator, facilitator, or mediator serves at the will of the parties. A "neutral" is an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy. Neutrals should be knowledgeable about the chosen ADR process, and familiar with the applicable laws and regulations related to the issue in controversy.

Attachment B: REFERENCES

B.1 The Contract Disputes Act of 1978, as amended, 41 U.S.C. §§ 601-613.

B.2 Grievance procedures, 5 U.S.C. § 7121.

B.3 General Accounting Office, Administrative Practice and Procedure, Bid Protest Regulations, Government Contracts, 4 C.F.R. Part (Pt.) 2.

B.4 Merit Systems Protection Board, 5 C.F.R. Chapter (Ch.) II.

B.5 Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel, 5 C.F.R. Ch. XIV.

B.6 Federal Sector Equal Employment Opportunity, 29 C.F.R. Pt. 1614.

B.7 Federal Acquisition Regulation (FAR), 48 C.F.R. Ch. 1.

B.8 NASA FAR Supplement, 48 C.F.R. Ch. 18.

B.9 Exec. Order No. 12988, Civil Justice Reform, 61 Fed. Reg. 4,729 (Feb. 7, 1996).

B.10 Exec. Order No. 12979, Agency Procurement Protests, 60 Fed. Reg. 55,171 (Oct. 27, 1995).

B.11 President of the United States Memorandum, Designation of Interagency Committees to Facilitate and Encourage Agency Use of Alternate Means of Dispute Resolution and Negotiated Rulemaking, May 1, 1998.

B.12 Attorney General of the United States Department of Justice Order, Promoting the Broader Appropriate Use of Alternative Dispute Resolution Techniques, April 6, 1995.

(URL for Graphic)

None

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