



**NASA
Policy
Directive**

NPD 2010.2C

Effective Date: March 06, 2003
 Expiration Date: March 06, 2027

COMPLIANCE IS MANDATORY FOR NASA EMPLOYEES

[Printable Format \(PDF\)](#)

Subject: Alternative Dispute Resolution (Revalidated w/Change 3 - 10/04/22)

Responsible Office: Office of the General Counsel

Chg#	Date	Description/Comments
3	10/04/2022	Directives revalidated with administrative updates made to comply with new directive requirements and editorial corrections.
2	11/16/2017	Update to comply with 1400 Compliance, with administrative changes, updated applicability statements in P.2, updated P.4, Applicable Documents and Forms, made changes to P.5 Responsibility, and updated P.6 Delegation and Authority & P.7, Measurement/Verification.
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;

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- (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 will maintains continuous 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, 5 U.S.C. § § 571-584 vary depending on such things as the type of ADR procedure used, the number of parties participating, and the issues involved. 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.

2. Applicability

- a. This directive is applicable to NASA Headquarters and NASA Centers, including Component Facilities and Technical and Service Support Centers.
- b. In this directive, all mandatory actions (i.e., requirements) are denoted by statements containing the term "shall." The terms: "may" or "can" denotes discretionary privilege or permission, "should" denotes a good practice and is recommended, but not required, "will" denotes expected outcome, and "are/is" denotes descriptive material.
- c. In this directive, all document citations are assumed to be the latest version unless otherwise noted.

3. Authority

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

4. Applicable Documents and Forms

- a. Alternative Means of Dispute Resolution in the Administrative Process, Pub. L. No. 101-552, as amended by Pub. L. No. 104-320. 5 U.S.C. §§ 571-584.
- b. Authorization of arbitration, 5 U.S.C. §§ 575 et seq.
- c. Dispute Resolution Specialists, Pub. L. No. 101-552, § 3(b), as amended, 104 Stat. 2736 (1990),
- d. Express options, flexible alternative procedures, accelerated schedules, summary decisions, and status and other conferences, 4 CFR § 21.10(e).
- e. Pre-complaint Processing, 29 CFR § 1614.105

5. Responsibility

- a. The General Counsel is responsible for the following:
 - (1) Authorizing the use of ADR in accordance with Express options, flexible alternative procedures, accelerated schedules, summary decisions, and status and other conferences, 4 CFR § 21.10(e) such as outcome prediction to resolve bid protests before the Government Accountability Office and the use of ADR such as arbitration or mediation to resolve 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, Mission Support and Headquarters Operations, 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, Office of Diversity and Equal Opportunity, 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 Pre-complaint Processing, 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 Alternative Means of Dispute Resolution in the Administrative Process, 5 U.S.C. §§ 571-584 to take actions required or permitted as related to the use of arbitration and or binding arbitration, Authorization of 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 Dispute Resolution Specialists, Pub. L. No. 101-552, § 3(b) 104 Stat. 2736 (199), as amended.

7. Measurement/Verification

Headquarters and Centers, including Component Facilities, will notify the DRS annually of the use of ADR.

8. Cancellation

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

REVALIDATED OCTOBER 4, 2022, 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, outcome prediction, arbitration, and use of ombudspersons, or any combination thereof. However, except as specified by grievance procedures set forth in Grievance procedures, 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.

"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.

Attachment B. REFERENCES

- B.1 Grievance procedures, 5 U.S.C. § 7121.
- B.2 The Contract Disputes Act of 1978, as amended, 41 U.S.C. §§ 601-613.
- B.3 Administrative Dispute Resolution Act, as amended, Pub. L. 104-320, 110 Stat. 3870 (1996)
- B.4 Civil Justice Reform, EO 12988, 61 Fed. Reg. 4,729 (Feb. 7, 1996).
- B.5 Agency Procurement Protests, EO 12979, 60 Fed. Reg. 55,171 (Oct. 27, 1995).
- B.6 Purpose and General Provision, 4 CFR pt. 2.
- B.7 Merit Systems Protection Board, 5 CFR Chapter (Ch.) II.
- B.8 Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel, 5 CFR Ch. XIV.
- B.9 Federal Sector Equal Employment Opportunity, 29 CFR pt. 1614.
- B.10 Federal Acquisition Regulation (FAR), 48 CFR Ch. 1.
- B.11 NASA FAR Supplement, 48 CFR Ch. 18.
- B.12 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.13 Attorney General of the United States Department of Justice Order, Promoting the Broader Appropriate Use of Alternative Dispute Resolution Techniques, April 6, 1995.
- B.14 NPD 3713.6, Delegation of Authority to Act in Matters Pertaining to Discrimination Complaints.
- B.15 NPR 3713.2, ADR in Discrimination Complaints.
- B.16 NPR 3771.1, NASA's Administrative Grievance Systems (AGS).
- B.17 The Interagency Alternative Dispute Resolution Working Group. <http://www.adr.gov/>.

(URL for Graphic)

None

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