

DEPARTMENT OF DEFENSE**Defense Logistics Agency****48 CFR Parts 5433 and 5452****DLA Acquisition Directive: Alternative Dispute Resolution**

AGENCY: Defense Logistics Agency (DLA), Defense.

ACTION: Final rule.

SUMMARY: This final rule adds a new provision to DLA solicitations concerning the use of alternative dispute resolution (ADR). The purpose is to establish ADR as the initial dispute resolution method, except for certain circumstances, to increase cooperative problem solving and reduce litigation. The provision is optional for offerors; however, if they agree to the provision, both the contractor and DLA will be committed to use of ADR except in limited circumstances. Increased use of ADR is consistent with the Administrative Dispute Resolution Act, the Federal Acquisition Regulation (FAR), and Departmental policy.

EFFECTIVE DATE: May 17, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Massaro, Procurement Analyst, Defense Logistics Agency, DLA/J-336, at (703) 767-1366, or via email to mary_massaro@hq.dla.mil.

SUPPLEMENTARY INFORMATION:**A. Background**

DLA is pursuing several initiatives to increase the use of ADR in resolving contract disputes. One way to increase use of ADR is for the parties to agree, as part of the contract, that they will use ADR before initiating litigation. This type of approach is used by DoD in partnering agreements and Agency-contractor ADR pacts.

The provision provides a vehicle for both parties to agree to use ADR.

Offerors can opt out of the provision by checking the box if they do not want it in their contract in the event of award. Offerors can also propose alternate wording to tailor the language while retaining the concept.

A proposed rule was published in the **Federal Register** on May 16, 2000. Sixteen commenters submitted comments. Changes were made to the proposed rule to clarify or simplify the language, and to reference existing FAR and DLA requirements. The language of the final rule, as revised, appears below.

B. Regulatory Flexibility Act

This final rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. An initial regulatory flexibility analysis was not performed.

C. Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements that require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 5433 and 5452

Government procurement.

For the reasons set forth above, the Defense Logistics Agency amends 48 CFR Chapter 54 as follows:

1. Part 5433 is added to read as follows:

PART 5433—PROTESTS, DISPUTES AND APPEALS

Authority: 10 U.S.C. Chapter 137.

5433.214. Alternative Dispute Resolution (ADR).

The contracting officer shall insert the provision in 5452.233 in all solicitations unless the conditions at FAR 33.203(b) apply.

PART 5452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. The authority citation for Part 5452 continues to read as follows:

Authority: 10 U.S.C. Chapter 137.

3. Part 5452 is amended by adding solicitation provision 5452.233-9001 to read as follows:

5452.233-9001 Disputes: Agreement to Use Alternative Dispute Resolution (ADR).

As prescribed in 5433.214, insert the following provision:

Disputes: Agreement to Use Alternative Dispute Resolution (ADR) (Apr 2001)—DLAD

(a) The parties agree to negotiate with each other to try to resolve any disputes that may arise. If unassisted negotiations are unsuccessful, the parties will use alternative dispute resolution (ADR) techniques to try to resolve the dispute. Litigation will only be considered as a last resort when ADR is unsuccessful or has been documented by the party rejecting ADR to be inappropriate for resolving the dispute.

(b) Before either party determines ADR inappropriate, that party must discuss the use of ADR with the other party. The documentation rejecting ADR must be signed by an official authorized to bind the contractor (see FAR 52.233-1), or, for the Agency, by the contracting officer, and approved at a level above the contracting officer after consultation with the ADR Specialist and with legal counsel. Contractor personnel are also encouraged to include the ADR Specialist in their discussions with the contracting officer before determining ADR to be inappropriate.

(c) If you wish to opt out of this clause, check here []. Alternate wording may be negotiated with the contracting officer.

William J. Kenny,

Executive Director, Logistics Policy and Acquisition Management.

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