

**ALTERNATIVE MEANS OF DISPUTE RESOLUTION (ADR) PROGRAM  
FOR ACQUISITION**

**1. REASON FOR ISSUE:** This handbook updates Department of Veterans Affairs (VA) procedures for the Alternative Means of Dispute Resolution (ADR) Program for Acquisition and implements the policies in VA Directive 7433.3, Alternative Means of Dispute Resolution (ADR) Program for Acquisition.

**2. SUMMARY OF CONTENTS/MAJOR CHANGES:**

a. This document updates procedures for VA contracting activities to request an impartial or neutral third party (Neutral) from the VA Board of Contract Appeals (VABCA) for assistance in ADR procedures. This reissue of the handbook removes the "pilot program" designation and expands the ADR program to apply to bid protests.

b. The responsibilities of the contracting officer and the VABCA under the program are provided. This handbook contains information on obtaining assistance from the VABCA Chair, provides guidance on preparing ADR agreements and pertinent document files, and further outlines the contracting activity's reporting requirements under the program.

**3. RESPONSIBLE OFFICE:** The Office of Acquisition and Materiel Management (90) and the VA Board of Contract Appeals (09).

**4. RELATED DIRECTIVE:** VA Directive 7433.3, Alternative Means of Dispute Resolution (ADR) Program for Acquisition.

**5. RECISSION:** VA Handbook 7433, Alternative Means of Dispute Resolution (ADR) Pilot Program, dated March 29, 1995.

**CERTIFIED BY:**

/S/

Principal Deputy Assistant Secretary  
for Information and Technology

**BY DIRECTION OF THE SECRETARY  
OF VETERANS AFFAIRS:**

/S/

Edward A. Powell, Jr.  
Assistant Secretary for Management

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## TABLE OF CONTENTS

Paragraph	Page
1. Purpose and Scope	5
2. Responsibility	5
3. Confidentiality	7
4. Expenses	7
5. Requesting ADR and a Neutral	7
6. ADR Agreement	8
7. Document Files	9
8. Conclusion/Reporting Requirements	10
9. ADR on the Web	10
Appendix A: Request for a Department of Veterans Affairs Board of Contract Appeals (VABCA) Neutral	A-1
Appendix B: Alternative Dispute Resolution Agreement Between the Department of Veterans Affairs and the Contractor (Sample)	B-1
Appendix C: Alternative Means of Dispute Resolution (ADR) Program for Acquisition Evaluation	C-1
Appendix D: Alternative Means of Dispute Resolution (ADR) Procedures for Acquisition	D-1

## ALTERNATIVE MEANS OF DISPUTE RESOLUTION (ADR) PROGRAM FOR ACQUISITION

### 1. PURPOSE AND SCOPE.

a. This Department of Veterans Affairs (VA) Handbook contains Department-wide guidance and procedures for the ADR Program for Acquisition. This program provides VA contracting activities with a core of impartial or neutral third parties (Neutrals) through the VA Board of Contract Appeals (VABCA) to assist contracting officers in ADR procedures. The program's objective is to increase the use of ADR procedures by providing easy access to impartial, qualified, and experienced Neutrals. This will, in turn, increase the opportunities for relatively inexpensive and expeditious resolution of issues in controversy and disputes, as prescribed by the Federal Acquisition Regulation (FAR), Subparts 33.103, Agency protests, and 33.214, Alternative Dispute Resolution (ADR), and VA Acquisition Regulation (VAAR) Sections 833.103, Protests to the Department, and 833.214, Alternative Dispute Resolution (ADR).

b. The VABCA, composed of five administrative judges, the Chair, Vice Chair, and a hearing examiner, considers disputes between contracting officers and Federal contractors in connection with VA construction, supply, and service contracts and leases pursuant to the Contract Disputes Act of 1978. The VABCA is unique in that it has the independence required to be a Neutral within the Agency. It is neither connected with the Office of the General Counsel (OGC) nor with any contracting function within VA. In that capacity, the VABCA members are trained Neutrals and have been acting as settlement judges, arbitrators, mediators, and Neutrals in appeals docketed by the Board.

### 2. RESPONSIBILITIES.

a. **Contracting Officer.** Under this program, the contracting officer, having the authority to use ADR procedures at any time during the life of the contract, will:

(1) Consult with OGC before discussing the use of ADR and obtaining a conditional agreement from the contractor.

(2) Submit to the VABCA Chair a request for a VABCA Neutral. (See paragraph 5, Requesting a Neutral.)

(3) Prepare the ADR agreement to implement the ADR procedure that will be followed throughout the proceedings.

(4) Assemble and ensure that pertinent documents surrounding the issue in controversy are provided to the Neutral 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.

(5) Within 30 days after the conclusion of the ADR proceedings, submit a report on the outcome of the ADR procedure to the VABCA Chair. This report will include the contracting activity's assessment of the ADR process. (See paragraph 8, Conclusion/Reporting Requirements.)

(6) Contracting officers and contractors are encouraged to contact the VABCA hearing examiner or OGC with any questions or concerns they may have regarding this program.

**b. VABCA.**

(1) The VABCA Chair, VA's Dispute Resolution Specialist, or designee will:

(a) Notify the contracting officer and contractor in writing when the request for a Neutral is approved or disapproved. When approved, the VABCA Chair will appoint an administrative judge or hearing examiner as a Neutral.

(b) Receive contracting activities' reports on the outcome of the ADR procedures and assess the outcome and the Agency's benefits derived from the program. This assessment will be shared with the Deputy Assistant Secretary for Acquisition and Materiel Management (90) and OGC (02).

(2) The administrative judge or hearing examiner, as the appointed Neutral, will:

(a) Schedule and conduct telephone conferences, as considered appropriate by either contracting officer, contractor, or the Neutral, to discuss outstanding issues pertinent to the ADR procedure and the issue in controversy. The Neutral may also conduct ADR proceedings by telephone to hear and resolve the issue in controversy, depending on the complexity of the issue.

(b) Conduct ADR proceedings or narrow the issues via telephone conferences prior to face-to-face negotiations.

(c) Assist the contracting officer and contractor in selecting the appropriate ADR procedure. The Neutral may also assist the parties in preparing the ADR agreement to implement the proceedings.

### 3. CONFIDENTIALITY.

a. Section 4 of the Administrative Dispute Resolution Act of 1996 (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 arbiter 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 VABCA Neutral shall not discuss the merits of the issue in controversy raised during the ADR proceedings with any Board members and will be recused from consideration of any subsequent appeal filed with the VABCA. 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.

### 4. EXPENSES.

a. **VABCA Expenses.** The VABCA Neutral will be provided at no cost to either party. It is not contemplated that the parties conducting ADR procedures will incur significant costs. Each party will be responsible for their own costs, i.e., witnesses and experts.

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 OGC on the payment of attorney fees and costs.

### 5. REQUESTING ADR AND A NEUTRAL.

a. The parties should jointly consider the role they wish the VABCA Neutral to play in the ADR proceedings. This election can be made with the assistance of the ADR Neutral (See Appendix D).

b. After consulting with the OGC and obtaining conditional agreement from the contractor, the contracting officer may submit to the VABCA Chair a request for a Neutral. The request should have the required information, as formatted at Appendix A, Request for a VABCA 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 to assist the VABCA Neutral in understanding the issue in controversy.

**6. ADR AGREEMENT.** The contracting officer and the contractor shall agree in advance on the ADR procedure to be used. Selected guidelines, procedures, and requirements implementing the ADR procedure shall be prescribed by a written agreement between the contracting officer and the contractor. The Neutral can assist the disputing parties to resolve the procedural issues and prepare the ADR agreement before proceedings are initiated. The ADR proceedings will commence with a signed ADR agreement between the contracting officer and the contractor and will, at a minimum, 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. Appropriate certification requirements. (See FAR Subpart 33.207.)

d. Role of the Neutral defined, i.e., mediator, advisor, arbitrator, facilitator, settlement judge, or a combination or multiple function (hybrid role).

e. The submission of documents schedule.

f. The use of attorneys and expert witnesses.

g. The overall time needed to complete the ADR process is 60 to 90 days, not to exceed 120 days from requesting a VABCA Neutral. Allow adequate time for document exchange and OGC 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 proceeding in subsequent adjudication.

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.

## **7. DOCUMENT FILES.**

a. The parties are responsible for assembling pertinent documents for the ADR proceedings. This will enable the Neutral to understand the respective positions of the parties and the related contractual provisions surrounding the issue in controversy. The documents should be arranged in chronological order, numbered sequentially, tabbed, and indexed. Not more than one copy of each document should be included in the file. As noted above, 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.

b. Prior to submitting the documents, the contracting officer should consult with the contractor regarding any documents the contractor believes should be included. The contracting officer shall forward the documents to OGC for review. Upon OGC's approval to release the pertinent documents, the contracting officer shall forward copies of the index and the document files to the contractor, the VABCA Neutral, and any other individual involved in the ADR proceedings. This process should occur on an expedited basis. Arrangements can be made with the Neutral for submission of any documents that are inadvertently omitted from the original submission.

c. A schedule for document submission should be agreed to by the contracting officer, the contractor, and the Neutral and be included in the ADR agreement, when applicable.

d. During the early stages of the ADR process, the contracting officer and the contractor may consider preparing written submissions that set forth what they consider are the important facts regarding their respective positions. Whether such submissions are desired will be at the option of the respective party.

**8. CONCLUSION/REPORTING REQUIREMENTS.** Within 30 days after the conclusion of each ADR procedure, the contracting officer shall provide the VABCA with the information requested at Appendix C, Alternative Means of Dispute Resolution (ADR) Program for Acquisition Evaluation.

**9. ADR ON THE WEB.** Additional information and copies of ADR Directive 7433.3 and this Handbook can be found on the Internet at <http://www.va.gov/bca/index.htm> and <http://www.va.gov/adr/index.htm>.



NOVEMBER 24, 1998

VA HANDBOOK 7433.3  
APPENDIX A

**REQUEST FOR A DEPARTMENT OF VETERANS AFFAIRS  
BOARD OF CONTRACT APPEALS (VABCA) NEUTRAL**

- 1. Solicitation/Contract Number:**
- 2. Contracting Facility:**
- 3. Names and Telephone and Fax Numbers of Contracting Officer, Contracting Officer's Technical Representative, Attorney from the Office of the General Counsel (OGC), and Other Key Government Participants:**
- 4. Contractor's Name, Address, and Telephone and Fax Numbers:**
- 5. Does the Contractor want to use ADR?**
- 6. Brief Work Description and Issue 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 in Controversy (i.e., has a claim been submitted or a final decision rendered?):**
- 9. Has OGC concurred in this request? (The contracting officer must make this request only after consulting with OGC at (202) 273-8608.)**
- 10. Schedule or Time Frame For Completion of the ADR Proceeding (allow adequate time for document assembly and OGC's review):**

**If either party has any questions regarding the request, Alternative Means of Dispute Resolution (ADR), or the ADR process, please contact Patricia J. Sheridan, Esq., at (202) 273-6743.**

**Submit To:**

**Patricia J. Sheridan, Esq.  
VA Board of Contract Appeals (09)  
810 Vermont Avenue, NW  
Washington, DC 20420  
Fax Number: (202) 275-5381  
e-mail: [patricia.sheridan@mail.va.gov](mailto:patricia.sheridan@mail.va.gov)**

*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  
DEPARTMENT OF VETERANS AFFAIRS  
(FACILITY, CITY, AND STATE)  
AND  
(CONTRACTOR, CITY, AND STATE)**

**BACKGROUND**

1. On \_\_\_\_\_ (*date*) the parties entered into Contract No. \_\_\_\_\_ (*or*) the VA issued Solicitation No. \_\_\_\_\_ for \_\_\_\_\_ (*provide description of work*) at the VA \_\_\_\_\_ (*location of VA 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 are 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. VA 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 VA Board of Contract Appeals (VABCA) or the Court of Federal Claims.

#### **TERMS OF THE ADR AGREEMENT**

The parties mutually agree that:

1. VA and \_\_\_\_\_ (*name of contractor*) shall voluntarily engage in a binding/nonbinding (*select one*) 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 that is authorized to settle the issue in controversy, or have immediate access to such an individual.
4. The disputing parties agree that a member of the Department of Veterans Affairs Board of Contract Appeals (VABCA) shall serve as the Neutral to the disputing parties. The VABCA Chair shall have the discretion to appoint the Neutral.
5. For purposes of establishing a framework for the ADR procedure, the parties agree to the following regarding certain general rules, prehearing 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 Board 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 binding/nonbinding 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 Dispute Clause of the contract or, for bid protests, under the provisions of FAR Subpart 33.1 and VA Acquisition Regulation Subpart 833.1.

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, 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 VABCA 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. 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 VA representative with authority to bind their respective parties.

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

**Department of Veterans Affairs**

\_\_\_\_\_

Contracting Officer

\_\_\_\_\_

Date

\_\_\_\_\_

Government's Trial Attorney (if applicable)

\_\_\_\_\_

Date

**Contractor**

\_\_\_\_\_

Name and Title of Contractor's Representative

\_\_\_\_\_

Date

\_\_\_\_\_

Contractor's Attorney (if applicable)

\_\_\_\_\_

Date

**VABCA**

\_\_\_\_\_

Neutral

\_\_\_\_\_

Date

**ALTERNATIVE MEANS OF DISPUTE RESOLUTION (ADR)  
PROGRAM FOR ACQUISITION EVALUATION**

- 1. Solicitation/Contract Number:**
- 2. Contracting Facility:**
- 3. Contracting Officer's, Contracting Officer's Technical Representative's and Other Key Government Participants' Names, Telephone and Fax Numbers:**
- 4. Contractor's Name, Telephone and Fax Numbers:**
- 5. Date of the Request for a VA Board of Contract Appeals (VABCA) Neutral and the ADR Completion Date:**
- 6. Dollar Amount That was in Controversy:**
- 7. Type of ADR Procedure Used, Explanation as to How Procedure was Selected by the Parties, and the Consideration Factors That Went Into the Decision:**
- 8. Brief Description of the Outcome of the ADR Proceedings (If a settlement was reached, there is no need to provide the settlement figure. Include aspects of the ADR that were positive or should be changed or improved. If possible, include the contractor's comments, if shared with the contracting activity.):**
- 9. Other Suggestions or Comments That Would Improve the Application of ADR Procedures in This Case:**

**Submit To:**

**Patricia J. Sheridan, Esq.  
VA Board of Contract Appeals (09)  
810 Vermont Avenue, NW  
Washington, DC 20420  
Fax Number: (202) 275-5381  
e-mail: [patricia.sheridan@mail.va.gov](mailto:patricia.sheridan@mail.va.gov)**

**ALTERNATIVE MEANS OF DISPUTE RESOLUTION (ADR) PROCEDURES  
FOR ACQUISITION**

Some of the reasons for using ADR are:

(1) The parties are seeking a substantial level of control over the resolution of the dispute.

(2) The parties have, or expect to have, an ongoing relationship.

(3) Communication between the parties has broken down to a significant degree and/or suspicion or personality clashes have developed.

(4) The parties desire frank discussions of the strengths and weaknesses of their respective positions with a Neutral who is experienced in contract matters before the VA Board of Contract Appeals (VABCA).

(5) The case appears to be headed towards formal adjudication.

(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) Top decision makers 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, expensive discovery.

The contracting officer and the contractor can tailor any ADR procedure, 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 to communicate this to the VABCA Neutral who will be assisting them. Some options of ADR procedures that may be used either alone or in combination with others are outlined below. VABCA Neutrals are willing to consider any process requested by the parties. It must be emphasized that the parties are free to design any process, giving the VABCA 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.



### **Mediation**

In a “pure” mediation session, the VABCA Neutral does not provide the parties with an assessment of the probable outcome of the litigation. A mediator attempts, through reviews and discussions with both parties, to assist in negotiating a settlement. The mediator assists the parties to: (1) structure the negotiation; (2) clarify the core issues in dispute; (3) avoid personality conflicts that would disrupt the negotiation; (4) identify the strengths and weaknesses of each side’s position; and (5) examine alternative approaches that may facilitate a compromise agreement.

### **Fact-Finder**

When the VABCA Neutral is asked to be a fact-finder, the parties are at an impasse that prevents them from reaching settlement because they cannot agree on the facts that will establish their respective positions. This process can be used early in the life of the issue in controversy and usually involves an informal presentation to the VABCA Neutral of the highlights of the parties’ cases or positions by persons possessing actual knowledge of the facts. Unless agreed to otherwise, the VABCA Neutral fact-finder provides a nonbinding evaluation, or an advisory opinion, concerning the facts in controversy (the evaluation does not include legal consequences resulting from those facts), that can give parties a more objective perspective on the strengths and weaknesses of their cases. The intent of this process is to resolve disputed facts, thereby making further negotiations more likely to be productive.

### **Settlement Judge**

This is the option most often used because the settlement judge process incorporates the best of mediation and fact-finding techniques and adds to them the VABCA Neutral’s assessment of how the parties will prevail if the matter is litigated. The settlement judge mediates an abbreviated presentation of the case and then evaluates its strengths and weaknesses in discussions with the disputing parties, either together or separately, as they desire. The settlement judge may also render an advisory opinion. The use of settlement judges rests on the premise that settlement can be fostered by a frank, in-depth discussion of the strengths and weaknesses of each party’s case with a VABCA Neutral. Since the VABCA Neutral will be removed from any further VABCA proceedings, the parties do not jeopardize their position before the remaining VABCA judges if

the matter is not resolved through the ADR proceeding. The advantage of this approach is the opportunity to gain authoritative advice as to how the case might be decided in a proceeding before the VA Board of Contract Appeals or the Court of Federal Claims.

A settlement judge can often help parties come to agreement by helping them develop options and explore acceptable settlements. The settlement judge meets separately with each party and does so as often as necessary during the negotiation. The settlement judge does not usually have the power to actually decide the dispute; rather, the parties develop any resolution themselves. Among the benefits of this process are the ability to develop solutions outside the parameters of conventional administrative or judicial remedies and the avoidance of the antagonism that can arise from extended litigation. The role of a settlement judge can be as active as the parties permit, thus keeping the parties in control of the process. The settlement judge can be the source of fresh approaches to problem resolution, a sounding board for settlement ideas, and a neutral advisor to both parties.

### **Arbitration**

Arbitration is a relatively formal process where the disputing parties turn the resolution of the matter over to the VABCA Neutral. This is the ADR technique that most closely resembles formal litigation. The VABCA Neutral, after receiving evidence, hearing each side's case, and following procedures agreed in advance by the disputing parties, issues a decision that may or may not be binding, depending upon the parties' agreement. The parties may limit time-consuming pretrial procedures, such as discovery, thereby resolving cases more quickly. The VABCA Neutral can issue awards with only minimal explanation of their rationale, substantially reducing the time between hearing and decision.