

# Alternative Dispute Resolution And Federal Contracting

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Karen D. Powell, Esq.  
Chair, Task Force on Federal  
Procurement  
ABA Dispute Resolution Section

Petrillo & Powell, P.L.L.C.  
Washington, D.C.  
(202) 887-4848  
KDPLawyer@aol.com

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# Introduction

- The Current Environment For Handling Contract Disputes
  - ◆ Limited Options To Begin With
  - ◆ Options Are Decreasing
  - ◆ Consequences of the Push Toward Partnering
- Needed - A change in thinking and approach
- Partnering Does Not Mean Giving In



# How Long Has This Been Going On

- The Status of the Federal ADR Initiative
- Techniques & Critiques
- The Role of Contract Administrators and Contracting Officers
- The Role For Attorneys

# The Federal Push To Use ADR

- Alternative Dispute Resolution Act of 1996
- E.O. 12979, and 12988
- The Federal Interagency Working Group
- Individual Agency Efforts
- ADR Has High Level Support In Government

# Are They Serious?

*“You know my  
uncle. He  
starts to play a  
game.”*

- Systemic and Institutional Problems
  - ◆ Funding The Settlement
  - ◆ Cultural Issues
  - ◆ Case Screening
  - ◆ ADR Focuses on Interests Rather Than Rights
- What about the Contractors



# ADR Techniques

- Mediation
- Early Neutral Evaluation
- Mini-Trial or Court-Sanctioned Binding ADR
- Currently, Binding Arbitration Is Neither Favored Nor Possible

# How It Works

*“One a’ them called him, and then two more.”*

*“Accused him of cheatin’, Lord it couldn’t be.”*

- Government Case Screening Criteria
  - ◆ Nature of Dispute
  - ◆ Outcomes Sought
  - ◆ Is ADR Likely To Succeed
- Contractor Case Screening Criteria
  - ◆ Client Relations
  - ◆ Cost and Reward
  - ◆ What Are the Other Alternatives

# How It Works (Cont.)

- Necessary Elements
  - ◆ Adequate Information
  - ◆ Trust
  - ◆ Involvement and Commitment of Principals
  - ◆ The ADR Agreement
  - ◆ Contingency Plans

*“I know my uncle.  
He’s as honest as  
me . . .”*



# Will It Work?

*“ . . . And I’m as honest as a Government man could be.”*

- Rational Evaluation of Merits
- ADR Requires A Willingness To Communicate
- Both Parties Must Stay Focused On Their Objectives
- Both Parties Must Have A Clear and Complete Understanding of the Process



# The Role Of Contracts Personnel

- Early Identification of Problems
- Communicate - With Management and Your Opposite
- Don't Lose Sight Of Goals and Objectives



# Back To The Future

- ADR in the Context of Procurement Reform
- Viewing The Dispute Process As a Continuum.
- ADR - Old Wine In New Bottles?

# Steps To Using ADR Techniques In Contract Disputes

- Learn About ADR Techniques
- Explore the Potential For Choosing ADR With Your Customers
- Assess Your Procedural Options
- Litigate Smarter