

14 May 1994

[NOTE: The following sample agreement is provided in response to requests the Board receives for examples of ADR agreements that may be suitable for use in ADR proceedings under the Board's "Notice Regarding Alternative Methods of Dispute Resolution." This sample is offered solely as an aid to the parties in focusing their thoughts on the ground rules that will best serve their interests in resolving a particular dispute. The Board recognizes that one of the strengths of the ADR process would be lost if the same procedural format were insisted on in every case. Thus, the Board by offering this sample does not intend to restrict the parties' discretion in tailoring the agreement to meet their particular needs. Paragraphs 2, 6 and 9, however, are key features of the settlement judge method of ADR. In all cases consultation with the presiding judge is encouraged.]

SAMPLE

AGREEMENT TO UTILIZE THE  
PROCEDURE OF SETTLEMENT JUDGE  
UNDER THE ASBCA'S "NOTICE REGARDING  
ALTERNATIVE METHODS OF DISPUTE RESOLUTION"

THIS AGREEMENT is entered into by and between  
(hereinafter "Appellant") and the Department of (hereinafter the  
"Government").

WHEREAS, Appellant and the Government entered into Contract No. ; and

WHEREAS, Appellant filed with the Armed Services Board of Contract Appeals (hereinafter the  
"ASBCA") an appeal under said contract; and

WHEREAS, said appeal is designated ASBCA No. ; and

WHEREAS, ASBCA No. \_\_\_\_\_ involves claims by [Appellant for][Government for] in the amount of \$ \_\_\_\_\_ ; and

WHEREAS, the parties wish to resolve the appeal by alternative dispute resolution, specifically with the assistance of a settlement judge, under the Contract Disputes Act; and

WHEREAS, the ASBCA is authorized to resolve disputes by alternative disputes resolution under its Charter and the Contract Disputes Act; and

NOW THEREFORE, the parties mutually stipulate and agree as follows:

1. Schedule. The ADR proceeding on the appeal is scheduled for \_\_\_\_\_ days(s), namely: \_\_\_\_\_, at the Board (or other agreed location).
2. Settlement judge. The judge's role will be to facilitate the parties' settlement efforts. The judge may meet with the parties either jointly or individually and to the extent necessary to foster a negotiated settlement of the dispute. The judge's recommendations are not binding on the parties. [Note: The settlement judge will normally not participate further in the appeal if the parties' efforts are unsuccessful, unless the parties seek the continued involvement of the judge.]
3. Record. [The parties should agree on what documents will be included in the record for consideration by the settlement judge in assessing the merits of the parties' positions]
4. Transcript. A transcript of the proceedings will not be prepared.
5. Agenda. The presentations of the parties will be informal and the rules of evidence are waived. The settlement judge may, nonetheless, guide the presentation of evidence. [The parties should spell out how they wish to make their informal presentations and agree on time to be allotted to various phases of the process. It is often helpful for each party to submit a brief position paper (3 to 5 pages) sufficiently in advance of the proceeding for the judge to consider it in connection with the record agreed to by the parties.]

6. Participants. Each party will include among its representatives a principal with authority to settle the appeal.

7. Use of statements and documents. The admissibility of statements made or documents used in connection with the ADR proceeding will be governed by Federal Rule of Evidence 408.

8. Fees and expenses. Each party will bear its own fees and expenses, including but not limited to attorney and agent fees and compensation for witnesses, incurred incidental to the ADR proceeding.

9. Good faith. All participants in the ADR proceeding agree to act in good faith in all aspects of the proceeding with the view of resolving the dispute.

APPELLANT GOVERNMENT AGENCY

By:

By:

Dated

Dated

