

**ALTERNATIVE DISPUTE RESOLUTION (ADR) ANNUAL REPORT**  
**FISCAL YEAR 2008 (SUPPLEMENTAL REPORT)**  
**REPORTING COMPONENT: Department of the Army**

REPORT CONTROL SYMBOL  
DD-GC(A)2099

	NSPS-RELATED	WORKPLACE (Labor- Management) (See Note 1 on Page 2)	WORKPLACE (Other) (See Note 1 on Page 2)	ACQUISITION	CLAIMS (See Note 2 on Page 2)	OTHER (Do not include ECR or EEO reporting)	TOTAL NUMBER OF ADR EVENTS BY PROCESS
OMBUDSMAN	0	21	2	0	0	9764	9787
PARTNERING	0	0	0	4	0	0	4
CONCILIATION	0	0	0	0	0	0	0
FACILITATION	0	14	1	0	0	0	15
MEDIATION	1	28	15	2	0	23	69
EARLY NEUTRAL EVALUATION	1	0	1	2	0	0	4
NON-BINDING ARBITRATION	0	0	0	0	0	0	0
BINDING ARBITRATION	0	38	0	0	0	1	39
SETTLEMENT JUDGE/ CONFERENCE	0	0	4	4	0	34	42
SUMMARY TRIAL	0	0	0	0	0	0	0
FACTFINDING	0	0	0	0	0	0	0
PEER REVIEW	0	0	0	0	0	0	0
OTHER	0	6	14	17 (See Note 3 on Page 2)	0	0	37
<b>TOTAL NUMBER OF ADR EVENTS BY SUBJECT MATTER</b>	<b>2</b>	<b>107</b>	<b>37</b>	<b>29</b>	<b>0</b>	<b>9822</b>	<b>9997</b>
<b>NUMBER OF RESOLUTIONS REACHED BY ADR</b>	<b>1</b>	<b>75</b>	<b>14</b>	<b>26</b>	<b>0</b>	<b>9809</b>	<b>9925</b>
<b>PERCENTAGE OF ADR CASES RESOLVED BY ADR</b>	<b>50%</b>	<b>70%</b>	<b>38%</b>	<b>90%</b>	<b>0</b>	<b>99.8%</b>	<b>99.3%</b>
<b>CASE IN PROGRESS</b>	<b>0</b>	<b>5</b>	<b>5</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>12</b>

Does your Component handle Workplace (EEO) cases? **YES**  
--If YES, attach a copy of the relevant EEOC Form 462. [Previously submitted.]

Does your Component engage in environmental conflict resolution (ECR)? **YES**  
--If YES, attach a copy of the OMB-CEQ form. [Previously submitted.]

Does your Component have one or more mechanisms to track efforts to resolve a dispute or claim before docketing or formal process (i.e., early resolution efforts as part of an established program)? **YES**  
--If YES, please see Page 2.

Does your Component have one or more mechanisms to capture the value of ADR to your Component (such as customer feedback, time and/or cost saved)? **YES**  
--If YES, please see Page 2.

**EARLY RESOLUTION** *(Attach additional sheets as necessary)*

--If your Component has one or more mechanisms to track efforts to resolve a dispute or claim before docketing or formal process (ie., early resolution efforts as part of an established program), briefly describe the mechanism and provide data, anecdotal information, or other information indicating the results of the efforts.

Army tracks EEO ADR through established data tracking and reporting procedures. Non-EEO workplace data is collected by Army G-1, but is fairly rudimentary, covering only what is required for the DoD report. Each of the acquisition activities (the Contract and fiscal Law Division, Army Materiel Command, and the U.S. Army Corps of Engineers, tracks its own case data that includes cases in ADR. The new Army ADR Program Office is working with practitioners in both workplace and acquisition dispute areas to beef up data collection and reporting processes, but this process will take time and gains will be incremental,

**VALUE OF ADR** *(Attach additional sheets as necessary)*

--If your Component has one or more mechanisms to capture the value of ADR to your Component (such as customer feedback, time and/or cost saved), provide data, anecdotal information, or other information describing the value of ADR.

Army data to evince the value of ADR is primarily limited to anecdotal accounts. There is currently no systemic mechanism for collecting, tracking, or reporting customer feedback or return on investment.

**LESSONS LEARNED/NARRATIVE** *(Attach additional sheets as necessary)*

- Describe lessons learned from use of ADR
- Provide points of contact for each issue or lesson
- Other information as appropriate

**Note 1 (UPDATED):** This report supplements the Workplace and NSPS data, updates relevant totals and percentages, and corrects some minor calculation errors in the Army's initial report submitted 12-31-2008.

**Note 2:** This report also does not include any ADR event data for "Claims," as the Army has not previously tracked or reported such data in its administrative claims operations.

**Note 3:** Of the 17 acquisition ADRs listed as "Other," 16 were bid protests processed under AMC's agency-level bid protest program.

**Army Wounded Warrior Program Data:**

The Army Wounded Warrior Program makes extensive use of trained ombuds in Army medical facilities and installations to help wounded soldiers and their families resolve issues related to their medical care, recovery, accommodations, transition, and career options, in a confidential setting. In FY08, 31 Army installations and medical treatment facilities worked 9,764 separate cases through their on-site contract ombuds. "Resolutions" in ombuds cases may differ from traditional definitions in other ADR processes, in that the matter prompting contact with the ombuds often is not a dispute, and resolution may be as simple as referring the soldier or family member to the appropriate office for assistance. Accordingly, every one of the 9,764 ombuds cases closed in FY 2008 was treated as a "resolution."

**Other Cases:**

1) U.S. Army Contract and Fiscal Law Division:

**Gray Personnel:** ADR (early neutral evaluation followed by mediation) in the appeals of Gray Personnel, ASBCA Nos. 54652 and 55833. These appeals stem from REAs submitted by the contractor for expenses incurred because of the Government's negligent estimates in contracts for nursing services at Walter Reed Army Medical Center (WRAMC) and Womack Army Medical Center (WAMC) at Ft. Bragg. The Government conceded entitlement and the parties agreed to ADR (early neutral evaluation followed by mediation) to resolve the issue of quantum. Appellant seeks \$703,431 on the WRAMC claim and \$2,565,112 on the Womack claim.

(Continued on Page 3)

DCAA audited both claims and found them unsubstantiated because Gray Personnel's electronic and paper accounting records were so disorganized that DCAA could not link the claim amounts to any documentation; and neither could Gray Personnel.

In preparation for ADR, Gray Personnel hired a CPA to sort the existing documentation and substantiate the claims. DCAA reviewed the CPA's report and found the substantiation inadequate. ADR was conducted and the parties were unable to reach agreement. It was clear from the early neutral evaluation that at a hearing the judge will give great weight to the CPA's report. So, the KO believed she needed DCAA to examine the same set of documents Gray Personnel's CPA used to substantiate Gray's claims. The KO has since changed her mind and wants to proceed to a hearing because Gray Personnel will not agree to pay for the CPA's time to meet with DCAA. On 5 November, we submitted to the KO a further litigation risk analysis (the second in this case) recommending we continue on the ADR path - i.e., pay for the consultant (approx. \$4,400) so that we can reach a settlement. The KO has not yet responded.

**C&D Security:** Case involved a guard services K for White Sands Missile Range, NM. The contract is a base 3 years with 12 option years. C&D filed a request for reimbursement for payment of \$218,741.44 due to the increase in wages and fringe benefits of a new collective bargaining agreement (CBA) during the final year of the base period. Also, DCAA determined in a K audit that C&D included approximately \$300K in unallowable costs during the previous two FYs. Upon this discovery, the KO issued a final decision demanding repayment of the \$300K. During mediation, it was discovered that the KO who awarded the K 5 years ago permitted C&D Security to bid the K with various items we had initially considered as contractor costs into the overhead and G&A columns. This allowed C&D to increase overhead items every three years based upon submission of a proposal and acceptance by the Army. The structure of the contract permitted increases in what were initially considered unallowable items. We lost that issue, but since C&D had submitted proposals every year, we were able to knock them back a little during mediation. And when a DCAA auditor provided "forensic auditing," we were able to create a settlement structured around the intent of the original contract. The amount we incorrectly withheld was calculated to be approximately \$81K, which the Army reimbursed to the contractor. A request for dismissal was filed with the ASBCA. Lessons Learned:

Learned it can be an easy process getting an ASBCA judge to mediate disputes. Counsel made the request when the parties filed the ADR agreement, and Board assigned a judge within a week. ADR location/date/time was set a week after this. Here, both parties wanted to get the case settled. It was a long-term (15-year) guard services contract, with 10 still left to go. The contractor did not want to lose a guaranteed contract, and the contracting officer did not want to issue a new solicitation after termination, and both parties wanted to get the contract back on track. There were several issues where both parties had dug in (increased union wages, truck damages, monthly costs for mission related services), but judge beat down both parties. After two days, the contract was back on track, and the parties both clearly understood each other's and their own contractual responsibilities.

**Harding Security Associates:** The parties entered into "structured negotiations." The Defense Intelligence Agency terminated for convenience a contract for interrogation services. The parties disagreed as to the quantum amount sought by Harding. Harding sought approximately \$200,000. The Government sought the return of \$2.1 million. The parties settled the dispute with Harding paying the Government \$1.8 million. If the negotiations had not succeeded, the parties agreed to seek the services of a settlement judge and use a more formalized version of ADR. This settlement comes under the umbrella of Alternate Disputes Resolution because the structured negotiations were an alternate to litigation. Because counsel was experienced, the parties generally trusted each other, a precedent was not needed, both parties had some risk, and the parties expected to continue a business relationship on other contracts, the dispute lent itself to ADR.

(Continued on Page 4)

2) U.S. Army Corps of Engineers:

In FY08, the Corps resolved two ASBCA appeals and one case before the COFC. Those three actions had a claim value of \$4,999,470, and were resolved for \$1,801,121.

The Corps processed two other appeals before the ASBCA with a combined claim amount of \$2,293,586. The amount in controversy in those cases, which were "blue roof" cases, was the product of a DCAA directive to withhold payments due to alleged overcharging. However, the DCAA calculation was based on a survey of less than 1 percent of the houses affected, and the Corps (and the Settlement Judge) determined that the DCAA formula was not supportable. The DCAA survey did confirm an approximate \$74,000 overcharge on the houses surveyed. At the mediation, the Corps offered to release the funds, less the \$74,000 in actual overcharge that was confirmed. However, counsel for the contractor would "not take yes for an answer" and the case was not settled there; however, counsel for the contractor ultimately moved to dismiss the appeal, finally resolving the case.

REPORT PREPARED BY			
NAME ( <i>Last, First, Middle Initial</i> )	TELEPHONE NUMBER ( <i>Include area code</i> )	SIGNATURE	DATE ( <i>YYYYMMDD</i> )
VAN NUYS, MARC	(703) 696-5240	//Signed//	20090206

**ALTERNATIVE DISPUTE RESOLUTION (ADR) ANNUAL REPORT  
INSTRUCTIONS**

**Reporting Component.** Identify the DoD component reporting.

**NOTE: Columns exist for Major Subject Categories. Rows exist for Major ADR processes.** Provide data only for each ADR event applicable. An **ADR event** is defined as a meeting or series of meetings between the disputing parties, jointly or individually, and a third party neutral or with input from a dispute resolution professional using one of the ADR methods to work towards resolution.

**NOTE:** If your component uses a definition that is different than a definition below, state your definition and any other relevant information in the Lessons Learned/Narrative section on Page 2.

**NSPS-Related.** Include disputes resulting from the performance management system or other aspect of implementation of the National Security Personnel System (NSPS).

**Workplace (Labor-Management).** Include grievances pursuant to a collective bargaining agreement (negotiated grievance procedure), unfair labor practices (ULPs), impasses, negotiability disputes and other undefined disputes addressed in a labor-management context.

**Workplace (Other).** Include grievances pursuant to an agency administrative grievance procedure, MSPB appeals, and other disputes between employees and management or between two or more employees.

**Acquisition.** Include ASBCA appeals, bid protests (agency and GAO), contract claims, and federal court cases.

**Claims.** Include federal tort claims, employee entitlements (e.g. travel claims), property damage claims, reports of survey, household goods loss and damage claims, medical-related and other claims against the Government.

**Other.** Specify in the Lessons Learned/Narrative section other areas where ADR was used in your component. Note that workplace (EEO) and environmental conflict resolution data is requested separately on the form.

**Total Number of ADR Events by Process.** This number should be the sum of all numbers in the row.

**Ombudsman.** A process in which a designated, impartial person receives complaints and questions from individuals concerning people within an entity, the functioning of an entity, or a program administered by the entity. An ombudsman works for the resolution of particular issues and, where appropriate, makes recommendations for the improvement of the general administration of the entities they serve. State what your program counts (eg., all office contacts or specific disputes) and any other relevant information in the Lessons Learned/Narrative section on Page 2.

**Partnering.** A formal process that brings key project participants (stakeholders) together with the aid of a facilitator to communicate effectively and work as a team in an orderly, efficient and progressive series of steps to identify problems, implement solutions, and resolve disputes. The facilitator maintains the team's ground rules, sense of commitment, and focus on defining and achieving mutually beneficial goals.

**Conciliation.** A problem-solving process in which a third party, called a conciliator, restores damaged relationships between disputing parties by bringing them together, clarifying perceptions, and pointing out misperceptions. The conciliator may or may not be totally neutral to the interests of the parties. This technique often is used prior to other ADR techniques, such as facilitation and mediation.

**Facilitation.** A flexible process in which the parties are assisted by a neutral third party in interest-based negotiations toward a resolution. The neutral, called a facilitator, provides procedural direction to enable the parties to effectively move through negotiation towards agreement. When used for conflict resolution, the facilitator's focus is on procedural assistance. Facilitation efforts frequently do not produce written settlement agreements.

**Mediation.** A favored ADR technique in which parties are assisted by a neutral third party, called a mediator, who assists in establishing negotiating procedures, identifying issues in conflict, and defining options for resolution. Mediators are not vested with any decision making authority and cannot impose resolution on the parties; the parties make the decision themselves. Mediation techniques vary and may be procedural, evaluative, or both.

**Early Neutral Evaluation.** An ADR technique which involves informal presentation by the parties to a neutral third party with respected credentials for an oral or written evaluation of the parties' positions. The evaluation of the strengths and weaknesses of the parties' positions on a specific issue may be binding or non-binding.

**ALTERNATIVE DISPUTE RESOLUTION (ADR) ANNUAL REPORT INSTRUCTIONS** *(Continued)*

**Arbitration.** A formal adversarial hearing before a neutral third party, called the arbitrator, with a relaxed evidentiary standard. The arbitrator is usually a subject matter expert. An arbitrator or an arbitration panel serves as a "private judge" to render an informed decision based on the merits of the dispute. The decision of the arbitrator may be **binding** (always the case in federal labor-management disputes) or **non-binding**. Although the Alternative Dispute Resolution Act authorizes binding ADR processes, an agency must have approved guidance prior to using a binding process unless there is other express statutory authority to conduct the binding process.

**Settlement Judge/Conference.** A judicial ADR technique in which a judge hears the positions of the parties and provides them with a non-binding evaluation. The judge may attempt to mediate the resolution of the dispute or simply evaluate the strengths and weaknesses of each of the parties' positions.

**Summary Trial with Binding Decision.** A judicial ADR technique used by federal government Boards of Contract Appeals. In this process, the parties make a summary presentation to an administrative judge who renders a binding decision.

**Factfinding.** The use of an impartial expert (or group) selected by the parties, by the agency, or by an individual with the authority to appoint a fact finder, in order to determine what the "facts" are in a dispute.

**Peer Review.** A problem-solving process where an employee takes a dispute to a group or panel of fellow employees and managers for a decision before it becomes a formal complaint or grievance.

**Other.** Provide the number of ADR events which used an ADR method not otherwise described on this Form. In the Lessons Learned/Narrative section on Page 2 provide a descriptor and definition of the method(s) used.

**Total Number of ADR Events by Subject Matter.** This number should be the sum of all numbers in the column.

**Number of Resolutions Reached by ADR.** Provide the number of resolutions reached by ADR, whether through a formal written settlement agreement or some less formal action, such as a handshake, or other agreement.

**Percentage of ADR Cases Resolved By ADR.** Provide data for closed cases in each category reporting.

**Case in Progress.** Cases in which the neutral involvement began prior to or during the fiscal year and did not end during the fiscal year.

**Workplace (EEO).** Attach the current year EEOC Form 462 submission, if applicable.

**Environmental Conflict Resolution.** If not previously sent under separate cover, attach the current year response to the OMB-CEQ survey regarding environmental conflict resolution, if applicable.

**Early Resolutions as Part of an Established Program to Promote Collaborative Conflict Resolution.** Describe the established program, the techniques used, and data gathered as applicable. Include resolutions with or without use of a third party neutral but with attorney or dispute resolution professional input, if applicable.

**Value of ADR.** Describe the methods used to determine and the data gathered to describe the value of ADR activity identified, for example, customer satisfaction data, time saved, cost avoidance data, anecdotal information.

**Lessons Learned/Narrative.** Describe lessons learned from use of ADR, providing points-of-contact for each issue or lesson described; and provide other information as appropriate, including a definition that differs from that described above.

**Report Prepared By.** Include name, telephone number, signature of preparer, and date the report is prepared.