

Alternative Dispute Resolution in Bid Protests at GAO

Daniel I. Gordon
Associate General Counsel
Procurement Law Division
General Accounting Office

ADR in GAO Bid Protests: The Numbers

	FY 2000	FY 1999	FY 1998
Cases Filed	1,220	1,399	1,566
ADR (cases used)	144	88	53
ADR Success Rate	81%	92%	83%

Two Types of ADR in GAO Bid Protests

Negotiation Assistance

Outcome Prediction

Negotiation Assistance ADR

- GAO attorney acts as facilitator
 - Initiated at any party's request or by GAO attorney
 - Non-binding--settlement is voluntary
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Negotiation Assistance ADR: Applicability

Best where a “win-win” solution is possible:

- Solicitation improprieties
 - Cost claims
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Negotiation Assistance ADR-Step 1

Secure agreement of protester and agency
to participate

Negotiation Assistance ADR-Step 2

Establish ground rules:

- Where
 - When
 - How
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Negotiation Assistance ADR-Step 3

- Hold the ADR session
 - If settlement is reached, protest is withdrawn or rendered academic
 - GAO attorney does not need to know specifics of settlement
 - GAO attorney will not “sign off” on any settlement
 - If no settlement is reached, GAO will issue written decision
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Outcome Prediction ADR

- The GAO attorney concludes, based on precedent and/or facts, that one party is very likely to prevail
 - Initiated at any party's request or by GAO attorney
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Outcome Prediction ADR: Purpose

- To share GAO attorney's views regarding likely outcome
 - Saves parties time and resources: Party not expected to prevail ("likely loser") can take action to end protest at relatively early point
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Outcome Prediction ADR: Applicability

- Broad applicability: Almost any protest or cost claim is a candidate
 - Exception: Issues of first impression
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Outcome Prediction ADR-Step 1

- Agreement of parties to engage in Outcome Prediction is not needed
 - As practical matter, the GAO attorney will not engage in Outcome Prediction ADR if “likely loser” refuses to participate
 - GAO attorney may not initiate Outcome Prediction ADR if there is no indication that the “likely loser” is either interested or willing to consider GAO attorney’s views
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Outcome Prediction ADR-Step 2

- Outcome Prediction ADR session is conducted
 - GAO attorney shares views regarding the protest and its likely outcome
 - Discussion of GAO attorney's views
 - If the “likely loser” takes no action, GAO will issue written decision
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Negotiation Assistance and Outcome Prediction ADR: Overall Points

- The line between the 2 types frequently blurs
 - Flexibility in ADR process is a hallmark
 - Commonality is that any action taken to end protest by either party is voluntary
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Negotiation Assistance and Outcome Prediction ADR: Common Benefits

- Protest resolved relatively early, saving time and resources
 - Parties and GAO have better understanding of the facts and issues, in case ADR does not resolve the protest
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ADR at GAO: Summary

- Flexible
 - Non-binding
 - It works
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