

Alternative Dispute Resolution for Rail Construction Projects

Summary of Policy

The Alternative Dispute Resolution (ADR) policy governs the implementation of an alternative process for the resolution of a class of contractor disputes between the Los Angeles County Metropolitan Transportation Authority (the agency) and the General Contractor and/or first tier subcontractors in a cost effective manner that meets relevant statutory and regulatory guidelines as well as the organization's policies. This policy finds that negotiated settlements are preferable to adjudicated decisions, and for staff to use its best efforts to achieve a mutually satisfactory resolution whenever possible.

Through this policy, the Chief Executive Officer (CEO) is authorized to exercise broad discretion in settling disputes over construction contracts in advance of arbitration or litigation. The CEO may also execute change orders of up to \$500,000 to settle disputes or liquidate arbitrator decisions involving general contractors and first-tier subcontractors that have performed construction work on the Metro Rail Lines. For those claims that cannot be settled through negotiation, the agency will enter into binding arbitration.

The CEO must inform the Board, in writing, of change orders over \$250,000 that settle disputes, but do not liquidate arbitration judgments. The Board will respond within seven days, if they object, and the matter will be added to the agenda at the next Construction Committee and full Board meetings. If the Board does not object, the CEO will execute the change order to resolve the dispute.

Historical Perspective

In November 1998, the Board adopted its first ADR Policy, after staff reported that it had a large backlog of claims from general

contractors and first-tier subcontractors against the agency over rail construction projects. The 1998 policy provided for disputes over claims under \$250,000. When staff returned to the Board in May 1999, it reported that there were still a small, but important, set of claims over \$250,000 that had not been resolved because they were not eligible under the existing policy. The Board then approved revisions increasing the dollar limit on claims which qualify for resolution through the ADR from \$250,000 to \$500,000; increasing the CEO's authority to execute change orders that implement settlement of those disputes or liquidated arbitrator decisions from \$250,000 per change to \$500,000 per general contractor or subcontractor per dispute; and for those change orders to be executed over \$250,000 that implement settlement agreements and are not liquidating arbitration judgments, the CEO's recommendations will be communicated to the Board in writing.

Last Board Action

May 27, 1999 - Alternative Dispute Resolution

The Board approved the revision of the Alternative Dispute Resolution (ADR) Policy which:

- A. increases the dollar limit on the claims which qualify for resolution through the ADR process from \$250,000 to \$500,000;
- B. increases the CEO's authority to execute change orders that implement settlement of those disputes or liquidate arbitrator decisions from the present limit of \$250,000 per change to \$500,000 per general contractor or subcontractor per dispute, inclusive of any required Authorization for Expenditure (AFE) adjustment; and

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- C. for those change orders to be executed over \$250,000 that implement settlement agreements and are not liquidated arbitration judgments, the CEO's recommendations will be communicated to Board members, in writing. Board members are requested to respond with any objections within seven calendar days of receipt. Any objection by a Board member to the CEO's recommendation, the matter will be brought before the next Construction Committee and full Board for consideration.