

## **ALTERNATIVE DISPUTE RESOLUTION (ADR)**

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### **Space Based Radar (SBR) Development Contract**

#### **Alternative Dispute Resolution**

#### **Memorandum of Agreement**

#### **Between**

#### **The Department of The Air Force**

#### **and**

#### **Lockheed Martin Corporation**

1. The Department of the Air Force (Air Force), and Lockheed Martin Corporation (collectively the Parties) have entered into contracts FA8820-04-C-0001. The Parties jointly share the objective of supplying America's war fighters with technologically advanced and reliable equipment in a timely manner and at a reasonable price to promote swift, safe and successful accomplishment of the national defense mission. This contract contains the "Disputes" clause (FAR 52.233-1) to implement the contract Disputes Act of 1978. However, as contemplated by FAR 33.214, the parties also recognize that Alternative Dispute Resolution (ADR) procedures involving collaborative techniques can be used as an alternative to Disputes Clause procedures in order to avoid the disruption and high cost of litigation which detracts from mission accomplishment.
2. The Parties agree that they will try to resolve all issues in controversy arising under or related to the contract by negotiation and mutual agreement at the contracting officer's level. If negotiations reach an impasse, the parties agree to use to the maximum extent feasible one or more of the ADR processes contemplated by FAR 33.2 to reduce or eliminate the need for litigation. The Parties further agree that any ADR process must be structured to allow sufficient time to exchange and analyze any information necessary to obtain and justify a settlement.
3. Consistent with FAR 33.214, in cases where the parties decide to use ADR, the parties will prepare and agree to a specific, written ADR agreement appropriate to the controversy, before the ADR process begins. The agreement should normally address the following (as appropriate): authorized representatives for each party; ADR techniques and processes to be utilized and procedures to be followed; methods for the exchange of information; a schedule and procedures

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for any discovery proceedings, including how to limit discovery/factual exchange; appointment and payment of neutrals; whether and to what extent to stay or suspend any pending litigation; possible audit requirements; confidentiality; at what point the parties will begin negotiations; and a provision for termination of the agreement.

4. If the contracting officer rejects a contractor’s request to use ADR proceedings, the contracting officer shall provide the contractor a written explanation citing one or more of the conditions in 5 U.S.C.572(b) or such other specific reasons that ADR procedures are inappropriate for the resolution of the dispute. See 41 U.S.C. 605(e) & FAR 33.214(b). In any case where a contractor rejects the government’s request to use ADR proceedings, the contractor shall inform the agency in writing of the contractor’s specific reasons for rejecting the request.
5. It is not the intent of the parties that this agreement alter, supplement or deviate from the terms and conditions of any contract(s) between the parties, or the legal rights and obligations of the parties set forth therein. Any changes to those contract(s) must be executed in writing by authorized contracting officials.
6. In the event either party believes a particular issue is not well-suited to ADR, or is dissatisfied with progress being made in a particular ADR proceeding, that party may, after good faith efforts to resolve the issue, elect to abandon the ADR process and proceed as otherwise provided under contract, regulation or statute. Nothing in this Agreement shall be deemed to prevent either party from preserving and exercising its legal rights and remedies during the ADR process.

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System Program Director  
Col. James Painter

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Date

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Contracting Officer  
David Block

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Date

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Contractor Program Vice President  
Donald G. DeGryse

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Date

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Contractor Manager of Contracts  
John A. Torrez

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Date

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**Overarching Principles  
Between The Department of the Air Force  
And  
Lockheed Martin Corporation  
Concerning Use of Alternative Dispute Resolution Processes**

The Department of the Air Force and Lockheed Martin Corporation share a mutual objective to supply American's warfighters with technologically advanced and reliable equipment in a timely manner to promote swift, safe and successful accomplishment of the national defense mission. Drawn out litigation consumes resources and funds detracting from this mission accomplishment. We recognize that for many business disputes there is a less expansive, more effective method of resolution than the traditional lawsuit. Alternative Dispute Resolution (ADR) procedures involve collaborative techniques which can often spare the Air Force and Lockheed Martin the high cost and wear and tear of litigation.

In recognition of the foregoing, we confirm our mutual commitment to use of ADR processes in accordance with the following principles:

- Conduct our existing and prospective future business in a manner that will avoid or minimize disputes.
- Following contract award, all Air Force/Lockheed Martin teams are encouraged to jointly review a particular contract's goals and objectives and identify all potential obstacles to its timely and effective completion. The team will periodically assess progress and success in overcoming these obstacles.
- Resolve all contractual issues in controversy at the program/contract execution level whenever possible, recognizing that the best knowledge of the issues involved is generally at the program level, and that resolution of problems at the contract execution level fosters teamwork in pursuing mutually satisfactory solutions.
- In the event an issue in controversy cannot be resolved through contracting officer negotiation, ADR, which involves various collaborative techniques to facilitate resolution, will be considered to settle the dispute in lieu of litigation.
- Air Force and Lockheed Martin management will be advised in a timely manner of any failure to make satisfactory progress in a dispute resolution at the contract execution level and will work together to either achieve settlement or to support use of ADR where appropriate.

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- Specific ADR collaborative techniques, timeliness and identification of neutrals appropriate to the issue in controversy will be mutually agreed to in writing before the ADR process begins.
- It is necessary for the parties to project information during the ADR process, the parties will enter into a confidentiality agreement to maintain such information in confidence to the extent permitted by law.
- It is not the intention of the parties to alter, supplement or deviate from the contract(s) and the legal rights and obligations of the parties set forth therein. Any changes to the contract(s) must be executed in writing by authorized contracting officials.
- In the event the ADR process does not produce results satisfactory for either party or if either party believes the issue in controversy is not suitable for ADR techniques, the disputes resolution process set forth in the Contract Disputes Act of 1978 (as set forth in FAR Clause 52 233-1) shall be followed.

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Principal Deputy Assistant Secretary (Contracting)  
of the Air Force (Acquisition & Management)

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Date

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G. Thomas Marsh  
Executive Vice-President  
Lockheed Martin Space Systems Company

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Date