



Tailor-Made ADR Fits Better Than Off-the-Rack

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If you use generic alternative dispute-resolution (ADR) provisions, you are

missing the core benefit of ADR—namely, the ability to customize ADR to

meet your specific needs.

We all know the potential benefits of ADR, as compared to litigation, include: 1) faster and less-expensive dispute resolution; 2) disposition by well-qualified construction lawyers and/or industry professionals, as compared to a judge and jury; and 3) confidentiality.

Most contracts, however, simply require mediation and/or arbitration administered by an ADR body. By using “off-the-rack” ADR provisions, the ADR process remains somewhat ill-defined, which can result in ADR that fails to deliver on the expected benefits.

Customize your ADR provisions by considering the following:

- Should mediation be required as a precondition to arbitration or at a later stage after some discovery?
- Specify the number of arbitrators based upon the amount in dispute.
- Mandate minimum qualifications for the arbitrators and the makeup of the tribunal, considering both the sole-arbitrator and three-person tribunal scenarios.
- Specify differing time periods within which the tribunal must issue an award based upon the amount in dispute.
- Define the nature and amount of allowable discovery, addressing document discovery, fact depositions and expert discovery, also varying with the amount in dispute.
- Provide for consolidation of proceedings where appropriate to avoid multiple proceedings and the risk of inconsistent awards.
- Consider cost/fee shifting provisions.

In sum, opt for “tailor made” for a better fit that will substantially enhance the prospects of realizing the full benefits of ADR. ♦

