

# Alternative Dispute Resolution in Bid Protests at GAO

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# 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%



Accountability \* Integrity \* Reliability

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# Two Types of ADR in GAO Bid Protests

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Negotiation Assistance

Outcome Prediction

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## Negotiation Assistance ADR

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- 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

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

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

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Secure agreement of protester and agency  
to participate

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# Negotiation Assistance ADR-Step 2

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Establish ground rules:

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

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- 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  - If settlement is reached, protest is withdrawn or rendered academic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

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- 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

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- 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

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- **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

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- 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

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- 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

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- 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**

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- 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

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- Flexible
  - Non-binding
  - It works
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