

## C.2 STATEMENT OF WORK/SPECIFICATIONS

The Contractor shall furnish the necessary personnel, material, equipment, services and facilities (except as otherwise specified), to perform the Statement of Work/Specifications set forth below.

The Contractor shall ensure that ADR professionals serving as neutral third parties under this contract receive information about and perform in accordance with the procedural and confidentiality requirements of applicable federal, state, and court provisions and rules applicable to their service. Relevant examples of potentially applicable provisions and rules include the Administrative Dispute Resolution Act of 1996 (ADR Act), 5 USC 57 et seq., and rules for the conduct of ADR promulgated by the federal District Courts.

The Contractor shall ensure that ADR professionals serving as neutral third parties under this contract receive information about and perform in accordance with ethical codes applicable to the practice of dispute resolution professionals. Relevant examples of ethical codes include those adopted by the American Arbitration Association, American Bar Association, Association for Conflict Resolution and International Coaching Federation.

([http://www.acrnet.org/uploadedFiles/Practitioner/ModelStandardsOfConductForMediatorsfinal05\(1\)\(1\).pdf](http://www.acrnet.org/uploadedFiles/Practitioner/ModelStandardsOfConductForMediatorsfinal05(1)(1).pdf)); the International Association of Facilitators (<http://www.iaf-world.org/aboutiaf/CodeofEthics.aspx>); and the International Association for Public Participation (<http://iap2.affiniscape.com/displaycommon.cfm?an=1&subarticlenbr=8>).

The Contractor shall remove ADR professionals from projects conducted under this contract if they do not conduct their practice in adherence with the statutory provisions or court rules and ethical codes appropriate to the services that they are providing.

The Contractor shall perform work under this contract only as directed in Task Orders issued by the Contracting Officer.

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**I. GENERAL INFORMATION - OVERVIEW**

**A. OBJECTIVE AND PROJECT DESCRIPTION**

The objective of this contract is to obtain contractor support to implement EPA's Alternative Dispute Resolution (ADR) Policy (65 FR 81858), December 2000, which was established under the Administrative Dispute Resolution Act of 1996 and to implement EPA's Public Involvement Policy (65 FR 82335). Under EPA's ADR Policy, the Agency encourages the use of ADR techniques to prevent and resolve disputes with internal and external parties in many contexts, including adjudications, rulemaking, policy development, administrative and civil judicial

enforcement actions, permit issuance, protests of contract awards, administration of contracts and grants, stakeholder involvement, negotiations, and litigation. In addition, the policy encourages the use of ADR techniques to prevent and resolve internal disputes such as workplace grievances and equal opportunity employment complaints, and to improve labor-management partnerships. EPA's Public Involvement Policy encourages Agency management and staff to provide for meaningful public involvement in EPA decision-making and offers guidance and direction on how to accomplish this mission.

This contract will provide a variety of services to support public involvement, conflict prevention and resolution activities at EPA, including but not limited to: conflict/situation assessments, process design, conduct of appropriate public involvement, conflict prevention and resolution processes, evaluation, training, and research and/or writing of case studies and program resource materials in addition to other services necessary to support these activities.

Additional information regarding EPA's public involvement and alternative dispute resolution programs is available at: <[www.epa.gov/publicinvolvement](http://www.epa.gov/publicinvolvement)> and <[www.epa.gov/adr](http://www.epa.gov/adr)>

**B. CONTRACT TYPE AND DURATION**

The EPA plans a fixed rate for services, indefinite delivery/indefinite quantity contract with total period of performance of 60 months

**C. OFFICE SPACE AND HOURS OF OPERATION**

The contractor shall maintain office space within the Washington, D.C. metropolitan area. EPA expects this office space to be staffed during normal working hours by the contractor's Contract Administrator and its contract administration staff in order to facilitate meetings between EPA and the contractor.

The contractor's project management and financial staff shall work hours compatible with normal work hours in the Eastern Time Zone (9 - 5 if located in the EST, 8 - 4 CST, etc.) so that contact with the Project Officer and Contracting Officer is facilitated.

**II. BACKGROUND ON EPA'S ALTERNATIVE DISPUTE RESOLUTION (ADR) PROGRAMS**

**A. ORGANIZATION OF EPA'S ADR PROGRAMS**

EPA's Conflict Prevention and Resolution Center (CPRC) in Office of General Counsel's (OGC) Alternative Dispute Resolution Law Office (ADRLO) provides ADR services to the entire Agency. The Agency's Dispute Resolution Specialist, designated under the Administrative Dispute Resolution Act of 1996, is the Associate General Counsel for ADRLO and is director of the CPRC. Because the Dispute Resolution Specialist's responsibilities include development and implementation of all Agency ADR policy, Headquarters Offices and Regions are expected to coordinate with the CPRC from the earliest stages in developing any program-specific ADR guidance and in addressing issues during ADR policy implementation.

The CPRC also administers Agency-wide ADR programs, coordinates case management, reporting and evaluation, and provides support to program-specific ADR activities. Building on existing ADR efforts at EPA, the CPRC assists other Agency offices in developing effective ways to anticipate, prevent, and resolve disputes, and makes neutral third parties more readily available for those purposes. The CPRC also provides specific support to implementation of EPA's Public Involvement Policy through consultation in design of public involvement programs and activities and participation on Agency implementation, training and evaluation projects in partnership with other EPA offices. A key component of the CPRC's ADR and public involvement services is management of contract support. CPRC provides staff time to manage the dispute resolution services contract and provides minimal funding for contract oversight, in addition to providing funding for a few specific ADR projects or cases. All other Task Orders on the dispute resolution services contract are funded and managed by the program office or regional office that is the sponsor of the project.

EPA's has dedicated programs which oversee the design and administration of workplace dispute prevention and conflict resolution programs including workplace grievances and Equal Employment Opportunity complaints. The ADRL0 provides legal support to these programs and the CPRC provides access to contract and evaluation services.

Other EPA offices, including the Office of Enforcement and Compliance Assurance (OECA), the Environmental Appeals Board (EAB) and the Office of Administrative Law Judges (OALJ), are using ADR to resolve conflicts between the Agency and regulated entities. EPA media program offices and the Office of the Administrator (OA), in partnership with many EPA program offices, use public involvement and ADR processes to provide opportunities for stakeholders to contribute to the design and implementation of Agency actions that affect them.

EPA Regions have ADR and public involvement programs that meet their particular needs. For example, in some cases, EPA Regions have identified staff experts called ADR Specialists, to coordinate workplace, enforcement, and/or other ADR activities. EPA Regions have also used internal and external neutral third parties to foster stakeholder involvement, resolve workplace disputes, help in organizational problem solving, and mediate enforcement cases. The CPRC continues to provide support to existing Regional ADR and public involvement programs and assists in developing new ADR and public involvement efforts.

## **B. EPA'S PUBLIC INVOLVEMENT, CONFLICT PREVENTION AND RESOLUTION ACTIVITIES**

EPA's Public Involvement Policy (June, 2003) describes a five part range of public involvement or engagement processes commonly used in EPA decision making. This range is illustrated in Figure 1. The most common activities in this range are Outreach and Information Exchange. EPA policy encourages EPA programs to undertake any of these activities in a collaborative and cooperative manner. Recommendations and Agreements processes may frequently require compliance with the Federal Advisory Committee Act (FACA), in addition to best practices in public involvement. EPA has led the government in initiating and supporting joint stakeholder action for voluntary pollution reduction, pollution prevention and sustainability activities.

EPA conducts its alternative dispute resolution (ADR) activities under a number

of statutes, executive orders, executive memoranda, and policy statements including: the Administrative Dispute Resolution Act of 1996, Alternative Dispute Resolution Act of 1998, EPA's ADR Policy (December 2000), and the Office of Management and Budget/council on Environmental Quality Policy Memorandum on Environmental Collaboration and Conflict Resolution (September 2012). EPA's ADR Policy encourages the use of ADR in appropriate cases or settings. Figure 2 illustrates the range of dispute resolution techniques available to federal agencies and commonly accepted in dispute resolution literature. EPA's primary approach to conflict prevention and resolution is unassisted public involvement and negotiation. However in cases where ADR assistance is considered in the best interest of the government, EPA's primary uses of ADR are in the non-binding ADR processes of conciliation, facilitation, mediation, and joint fact finding. EPA rarely employs arbitration.

Figure 1: EPA Public Involvement Processes

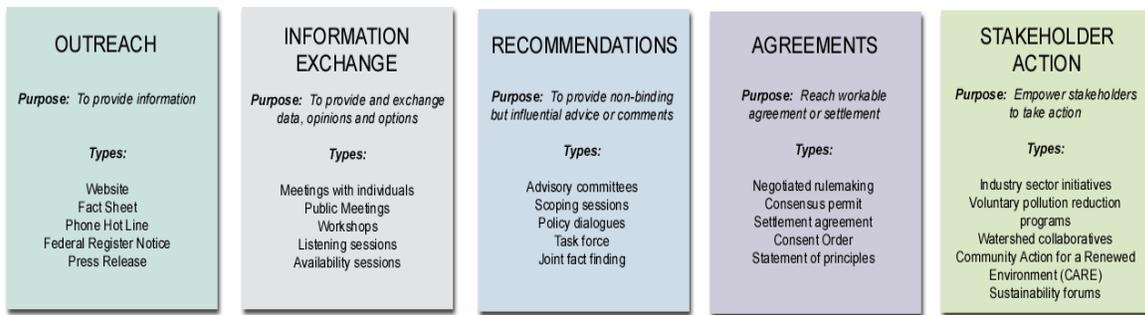
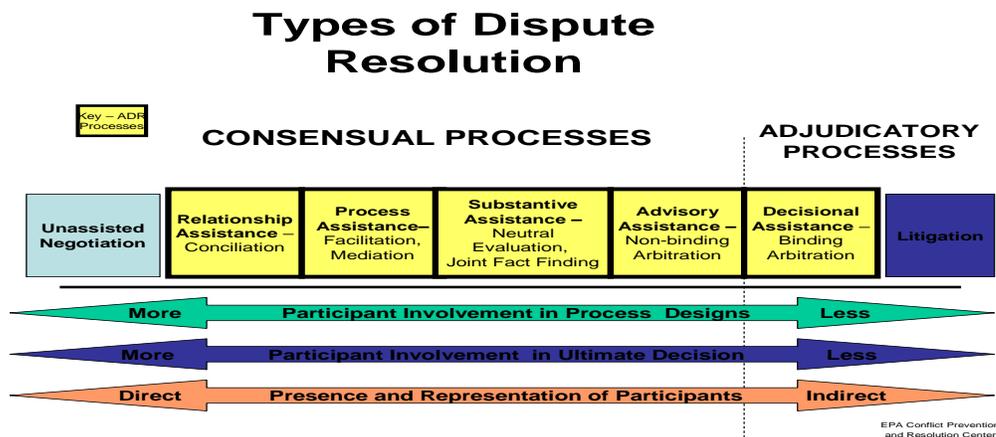


Figure 2: EPA ADR Processes



EPA's Public Involvement Policy (2003) and Alternative Dispute Resolution Policy (2001) can apply, under appropriate circumstances, to all of EPA's actions and decisions. This includes but is not limited to: regulations, policies, guidances, plans, permits, standards, enforcement actions, pollution prevention or reduction activities, and voluntary programs.

EPA's activities in public involvement and dispute prevention and resolution programs can be divided into the following major categories which may require contract support:

1. Design and Conduct of Recommendations and Agreement Seeking Processes;
2. Design and Conduct of Consultation and Information Exchange Processes;
3. Design and Conduct of Workplace Dispute Prevention and Resolution Processes;
4. Strategic Planning and Organizational Development Support;
5. Training Support;
6. ADR and Public Involvement Program Development and Support;
7. ADR and Facilitated Public Involvement Case and Program Evaluation
8. Arbitration.

Recommendation/Agreement-Seeking and Consultation/Information Exchange Processes can be further divided into cases or projects that involve national or regional regulation, policy or programs and those involve specific sites, geographic areas or facilities. These processes will require third party neutrals with different mixes of skills, knowledge, experience and abilities.

#### B.1. Design and Conduct of Recommendation and Agreement-Seeking Processes

Recommendation and agreement-seeking processes typically involve more than one meeting between the parties. Some agreement-seeking processes may last months or years, some may last only a day or two, depending on the scale of the discussion or dispute. Many agreement-seeking processes benefit from the skills and resources of a neutral third party or team of neutrals. Some of the skills expected of a conflict resolution professional in these activities are the ability to: analyze the sources of conflict, identify the affected participants, construct a negotiated agenda, design an effective format, assist the parties in overcoming impasses, assist the parties in obtaining and/or analyzing technical or scientific facts and information, assist the parties in seeking out options and constructing agreements, diffuse or manage controversy, manage logistics and accurately summarize information.

In addition, EPA's ADR Policy (2000) encourages the use of mediation and other ADR processes in settlement of administrative and judicial cases such as enforcement actions, permit appeals and U.S. District Court actions.

#### B.1.1. Agreement-Seeking Processes - National Policy and Regulatory Issues

Public involvement in development of regulations and policies typically occurs through informal notice and comment, as specified in the Administrative Procedure Act. This can be a particularly complex and sometimes contentious process. An agency develops facts and policy, solicits comments from

interested parties, and proposes a rule. The agency then analyzes the comments and issues a final rule. When this system fails to accommodate competing interests, the result can be some form of conflict, possible litigation or difficulties in compliance. ADR in the form of negotiated rulemaking and policy dialogues has been successfully applied to these regulatory and policy disputes.

EPA has conducted twenty-four regulatory negotiations and more than twenty-five national policy dialogues. These processes are generally conducted using a Federal Advisory Committee and are managed by a facilitator/mediator or team of facilitators. Goals of parties in these processes include reaching agreement on regulatory language, making recommendations on policy or program direction, reaching a joint understanding of existing data and data gaps, or conducting an examination of the practical effects of certain policies or regulations. Typically the processes involve 15 - 30 representatives of affected interest groups and last between 6 and 30 months. In addition to the necessary facilitative or mediative skills, it is usually necessary for the facilitation team to provide logistical and technical support to the negotiation committee by arranging meeting or teleconferencing facilities, taking notes, writing and distributing meeting summaries, and assisting with drafting of single text documents. Most of these processes are conducted in the Washington, D.C. area; however, the facilitators/mediators who manage the processes are not necessarily located in that area. Practical knowledge of the Federal Advisory Committee Act is necessary for these facilitators. Increasingly the lack of travel funds for EPA staff or stakeholders is pushing many of these processes to be held via telephone, video or on-line. In the future, facilitators will need skills to design appropriate processes to dialogue and gain input via electronic means or a mixture of in person or electronic processes. [General guidelines on the on the integration of technologies into agreement seeking processes and relevant practitioner skills are presented in "Guiding Principles for the Use of Technology in ECR Processes," which was developed by the Technology and ECR Coordinating Committee and is available at <http://www.ecr.gov/pdf/GuidingPrinciplesforUsingTechnologyinECRProcesses%28ForDistribution06302011%29.pdf>.](http://www.ecr.gov/pdf/GuidingPrinciplesforUsingTechnologyinECRProcesses%28ForDistribution06302011%29.pdf)

#### B.1.2. Agreement-Seeking Processes - Site, Facility or Geographic Area Negotiations

EPA also conducts agreement seeking conflict prevention and resolution processes at the site, facility or geographic area level. Examples of these cases include, but are not limited to, settlement of enforcement actions brought under any of EPA's regulatory programs (e.g., water, air, solid waste, hazardous waste, toxics, pesticides), finalization of facility pollution permits or permit modifications, negotiations for area specific water quality standards, Superfund site community advisory committees, Brownfields or Superfund site reuse planning or visioning processes, National Estuary Program committees, etc. Outcomes of these processes are documents upon which all involved parties have agreed such as settlement agreements, permits, consent orders, consent decrees, recommendations, memoranda of understanding, statements of principle, water quality standards, total maximum daily load (TMDL) decisions, site or area plans, land use and redevelopment planning, etc.

Examples of processes used to prevent, manage or resolve these issues include facilitation, mediation, early neutral evaluation, mini-trials and fact finding. These generally involve more than one meeting between the parties with

the services of the conflict resolution professional used to overcome impasses or communication difficulties. The conflict resolution professional may also provide significant logistical, technical or communications assistance to the parties. Sometimes it is advantageous, from either a cost or a cultural point of view, if the conflict resolution professional is located in the same or a nearby geographic area. Over the last 12 years EPA has used ADR in more than 300 agreement-seeking cases. Increasingly the lack of travel funds for EPA staff or stakeholders is pushing many of these processes to be held via telephone, video or on-line. In the future, facilitators will need skills to design appropriate processes to dialogue and gain input via electronic means or a mixture of in person or electronic processes. General guidelines on the on the integration of technologies into agreement seeking processes and relevant practitioner skills are presented in "Guiding Principles for the Use of Technology in ECR Processes," which was developed by the Technology and ECR Coordinating Committee and is available at <http://www.ecr.gov/pdf/GuidingPrinciplesforUsingTechnologyinECRProcesses%28ForDistribution06302011%29.pdf>.

## B.2. Design and Conduct of Consultation and Information Exchange Processes

Much of EPA's public involvement and conflict prevention activity involves processes designed to exchange and discuss scientific, technical, legal and policy information in ways designed to provide all parties the chance to have their views heard and to build understanding and improve relationships. These processes are not designed to reach agreement or to make recommendations. This facet of dispute prevention and public involvement has increased dramatically over the last 25 years and the Conflict Prevention and Resolution Center now consults regularly with every program office and regional office at EPA regarding application of facilitation to these information exchange and consultation processes. These processes encompass less formal, less intensive, usually shorter-term processes for discussion and input into decision-making than the Advisory Committees of negotiated rule making and policy dialogues, and may include such activities as facilitated public meetings, listening sessions, focus groups, open houses, joint learning workshops, technical workshops, conferences, forums and roundtables.

Some of the skills expected of a conflict resolution professional in these activities are the ability to: identify appropriate parties and stakeholders, construct a negotiated agenda, design an effective meeting format, manage the meeting so that the goals of the meeting are achieved in the time available, manage communications, manage and summarize technical and scientific data, manage logistics, diffuse or manage controversy, and accurately summarize information. Increasingly the lack of travel funds for EPA staff or stakeholders is pushing many of these processes to be held via telephone, video or on-line. In the future, facilitators will need skills to design appropriate processes to dialogue and gain input via electronic means or a mixture of in person or electronic processes. General guidelines on the on the integration of technologies into agreement seeking processes and relevant practitioner skills are presented in "Guiding Principles for the Use of Technology in ECR Processes," which was developed by the Technology and ECR Coordinating Committee and is available at <http://www.ecr.gov/pdf/GuidingPrinciplesforUsingTechnologyinECRProcesses%28ForDistribution06302011%29.pdf>.

### B.2.1. Consultation and Information Exchange Processes - National Policy and Regulatory Issues

EPA's Public Involvement Policy encourages early involvement of the affected public in EPA's regulation development process. Some of this public involvement occurs as public meetings, forums, listening sessions etc. facilitated by neutral third parties. These activities may consist of a single meeting or a series of related meetings. They may involve individuals specially identified for particular expertise or many very diverse individuals who self identify. The purpose may vary from a chance to air differences, to information and data exchange, to listing of alternatives and options, to examination and discussion of technical or scientific data. Occasionally, a facilitator may be requested for a single meeting or group of meetings of a standing Federal Advisory Committee. These processes are not designed to generate an agreement; however, the facilitator needs to have the skills to reach out to as many affected interests as possible and to accurately summarize the variety of individual viewpoints presented in a way that assists EPA in understanding the full range of opinions and data. An understanding of the application of the Federal Advisory Committee Act and other government sunshine laws is essential to proper design of public involvement processes conducted within legal constraints.

### B.2.2. Consultation and Information Exchange Processes - Site, Facility or Geographic Area Negotiations

EPA's Public Involvement Policy encourages early involvement of the affected public in decision-making that will affect them such as the cleanup of contaminated sites, issuance of permits, land use planning decisions, determinations of water body uses, etc. EPA's ADR policy favors the use of ADR processes to prevent disputes and improve relationships with the public in dealing with potential conflicts. EPA's ten regional offices and area specific offices such as the Great Lakes Program, the Gulf of Mexico Program and the Chesapeake Bay Program all work with local citizens, businesses, and governments in preventing or cleaning up pollution. Three of the most prominent on-going programs are the Superfund cleanup and reuse programs, the Brownfields program, and the National Estuaries Program. All of these programs have extensive public involvement activities and many of these activities require the use of skilled facilitators or mediators as well as support services to provide quality outreach products and technical assistance.

Most of these activities do not involve negotiating agreements between EPA and the affected public. Many of these processes are short-term activities such as public meetings, open houses and other public involvement processes designed to bring EPA management and staff into discussions with local citizens, local government, companies and interest groups. Some of these processes do require ongoing facilitation support of groups such as Citizen Advisory Committees under (CERCLA) or National Estuary Committees. While these groups may meet multiple times over a period of months or years, the end result is usually ongoing communication and dialogue and individual advice or recommendations rather than collective advice or agreement. Common to all of the short-term processes is a collaborative approach that seeks to foster an early exchange of information among affected interests so as to lead to greater communication and collaboration.

In many cases it is useful for the facilitator to be located in the same or a nearby geographic area - both to reduce costs and commuting time and to better understand the local situation and culture. This requires the skills

and experience to search out and identify appropriately skilled local facilitators.

### B.3. Design and Conduct of Workplace Conflict Dispute Prevention and Resolution Processes

EPA has dedicated programs to provide ADR assistance for the resolution of both Equal Employment Opportunity (EEO) and non-EEO related workplace issues that may be amenable to facilitation or mediation. The programs primarily use EPA staff trained in workplace mediation and the Interagency Shared Neutrals Program sponsored by the Department of Health and Human Services to mediate cases brought to it. However, parties to a mediation may opt to use outside professional mediators. Those mediators may be retained through this contract or through small purchase orders. While only 5 workplace disputes were handled under the 1999 - 2004 contract and no cases were handled under the existing EPA contract, the new contract needs to be able to access skilled and capable mediators or other neutrals for workplace disputes for situations in which internal US government neutrals are not available or appropriate.

### B.4. Strategic Planning and Organizational Development Support

EPA offices need support in office retreats, strategic planning, reorganization processes and facilitating internal conflicts or potential conflicts at the organizational level. The existing contract has provided support to a number of program offices with these needs; however, it is not the primary purpose of this contract since there are a number of sources at EPA to provide this type of organizational development or strategic planning support in addition to this contract. Access to skilled organizational development, executive coaching, and strategic planning facilitators needs to be planned for, but will not be a major service. If and when we are asked to provide support in individual and team coaching situations, EPA prefers that International Coach Federation certified coaches or the equivalent be used to provide services.

### B.5. Training Support

The Conflict Prevention and Resolution Center and other EPA program offices also encourage and sponsor training in public involvement, negotiation, mediation and other dispute resolution and consultative skills and knowledge areas for Agency management and staff both at Headquarters and in the Regional and field offices, for our co-regulators at the State and Tribal levels and for participants in ADR processes or Agency program initiatives. Past training courses have included collaborative decision-making, ADR skills for Headquarters and Regional enforcement personnel, meeting facilitation and mediation skills training, community involvement training, dealing with difficult people, cultural awareness training, general and advanced negotiation and stakeholder involvement training. Training design has usually been face-to-face seminars or workshops. Access to off-the-shelf training may be a cost-effective means of providing commonly requested training. The Agency is interested in exploring other innovative ways of transmitting information such as computer-based training, video training, video-conference training, webinars, etc. It is important that training be designed so that it can be replicated and possibly brought in-house for EPA employee presenters for both budget and program consistency reasons. Training sessions may be taught by contract personnel or the courses may be designed by contract personnel for presentation by Agency staff.

#### B.6. ADR and Public Involvement Program Development and Support

In addition, the Conflict Prevention and Resolution Center sponsors investigations, analysis, evaluation and research into the feasibility, effectiveness, costs and benefits of using specific dispute resolution, public involvement or consultative processes to solve particular environmental regulatory, policy or enforcement matters. Past research over the last three contracts has included a pilot program for use of mediation in Superfund cost allocation cases, detailed case studies of the use of mediation in EPA cases, a survey of the use of consensus-based processes throughout the Agency, development of an evaluation protocol for stakeholder involvement processes, evaluation of EPA's workplace mediation program and a study of public interest group attitudes and needs regarding regulatory negotiation, the environmental and economic impacts and cost-effectiveness of environmental ADR, and an aggregate analysis of ADR case evaluation data. The Conflict Prevention and Resolution Center has also used contractor assistance to research and draft program resource materials, manuals, outreach materials and handbooks in ADR and stakeholder involvement processes.

Full application of ADR processes to other program areas (such as environmental permits, water quality standards, facility siting, environmental impact assessments, contracts, grants and other assistance mechanisms) is likely to involve dispute systems design, research into previous examples of ADR use in each area, initial pilot program and evaluation. The conduct and evaluation of pilot programs, development of program resource materials and implementation of some or all recommendations based on the pilots are likely to be the subject of one or more Task Orders on this contract.

The Conflict Prevention and Resolution Center is responsible for coordinating, tracking and reporting on the use of ADR in EPA disputes under a number of executive orders such as the EO 13352, Facilitation of Cooperative Conservation, and other Presidential memoranda such as the Environmental Conflict Resolution Memorandum from the Council on Environmental Quality and the Office of Management and Budget. CPRC has designed a number of systems to provide data to the Administration and Congress about the range, extent and accomplishments of EPA's programs. EPA has used contract support for design, modification, coordination and implementation of ADR tracking systems and for data gathering, data entry and reporting. Evaluation of contract activities, both as a QA/QC matter on individual task orders and overall satisfaction measures of clients, has also been provided for under this contract.

#### B.7. Arbitration

The Administrative Dispute Resolution Act of 1996 provides for both non-binding and binding arbitration of disputes between the Federal government and other parties. Procedures to be followed by the government are stated in some detail in that Act and provide the basis for agency arbitration policies. However, EPA may not use binding arbitration or enter into agreements to do so unless and until it publishes a final policy on binding arbitration.

On May 30, 1989, EPA promulgated rules under the Superfund Amendments and Reauthorization Act that provide procedures for binding arbitration of disputes arising from EPA's Superfund cost recovery program. Cases to be arbitrated under this program must meet strict procedural and substantive requirements, must be for amounts under \$500,000 and must not have been referred to the Department of Justice.

EPA has not conducted any arbitrations under the previous contracts; however, if a policy is approved or parties request arbitration, there may be a need for access to arbitration services.

#### B.8. Other ADR Processes

EPA and other Federal Agencies have used Joint Fact Finding and Mini-Trials to good avail in a variety of disputes. Because EPA's ADR procedures and guidance encourage a careful and appropriate design, and because CPRC continues to encourage the use of ADR in all EPA programs, there are potential opportunities for use of Joint Fact Finding, Mini-Trials, Early Neutral Evaluation and other combinations of mediation like and arbitration like processes in which one or more of the "neutral third parties" have expertise in substantive matters rather than in dispute resolution processes. This contract shall be flexible enough to be able to assist EPA CPRC and EPA offices in designing these processes and in retaining appropriately skilled and qualified experts to serve in the process.

#### B.9. Just-In-Time or Quick Response Tasks

Many times disputes erupt with little lead time to get a project or case specific task order in place in time to provide facilitation or mediation services. Over the years, EPA has developed a multi-project task order which can provide "just-in-time" or "quick response" services in these situations. The task order is issued for a specified set of conflict assessment and facilitation or mediation tasks (the same ones outlined in the Statement of Work for facilitation or mediation of cases) for a set number of potential cases or projects. However, the case(s) for which these tasks will be performed are not named in the task order. When the need arises for a quick response, the Task Order Project Officer will issue a Technical Directive which provides the name of the case, the location where the services under the task order will be performed, a list of exactly which services in the task order will be necessary, and a description of the qualifications of an appropriate dispute resolution professional. The Technical Directive specifies a ceiling cost for the project in dollars and estimates the number of labor hours and other direct costs.

These Just-In-Time Task Orders are complicated to administer from a documentation point of view - each project assigned by Technical Directive must be tracked against its specified ceiling and the TOPO notified when the amount of work specified may exceed the available ceiling and when 50% has been spent for each Technical Directive. Past JIT Task Orders have had in excess of 50 separately assigned projects. Typical Just-In-Time task orders will handle 5 - 10 active cases or projects at a time. Monthly status reports must summarize work and upcoming needs for each project. Case reports or summaries must be produced for each project and the final report for the task order must include a discussion of all the cases and conclusions drawn across cases. Evaluation of service providers has to be carefully designed to identify and survey the people with the most knowledge. Just-In-Time task orders can be sponsored by EPA CPRC, program or regional offices.

#### B.10. Technical and Logistical Support

Proper handling of complex environmental dispute resolution and consultative processes involves a myriad of support tasks in order to be successful. Sometimes an EPA program office can provide logistical support (such

as meeting facilities and equipment, registration, communications) through their technical mission contracts. Sometimes logistical support needs to be coordinated through the Agency project officers with other Agency technical support contractors. Sometimes it is more convenient and efficient to have the logistical support coordinated closely with the dispute prevention and resolution services. This contract has historically provided access to administrative staff and logistics firms who can arrange for meeting facilities, equipment and supplies; and who can also provide assistance in communications with parties and the general public through arranging teleconferences, internet list serves, on-line dialogues, web pages, etc. Communications are also enhanced when materials provided to the parties and the public are well written and well designed, so including writer/editor assistance as an ancillary service provides value to the government.

Many disputes involve disagreements about factual matters - scientific, statistical, technical, and/or economic. It has proved efficient and necessary for the dispute resolution professional to be able to retain and work with technical experts in researching information and data, presenting this information to the parties, answering questions about the information, reporting results. This contract has historically, and will continue to, provide for the contractor to retain on EPA's and the parties' behalf, those technical and scientific experts necessary to advise parties in a dispute in cooperation with the dispute resolution professional.

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([http://www.acrnet.org/uploadedFiles/Practitioner/ModelStandardsofConductforMediatorsfinal05\(1\)\(1\).pdf](http://www.acrnet.org/uploadedFiles/Practitioner/ModelStandardsofConductforMediatorsfinal05(1)(1).pdf)); the International Association of Facilitators (<http://www.iaf-world.org/aboutiaf/CodeofEthics.aspx>); and the International Association for Public Participation (<http://iap2.affiniscape.com/displaycommon.cfm?an=1&subarticlenbr=8>).

The Contractor shall remove ADR professionals from projects conducted under this contract if they do not conduct their practice in adherence with the statutory provisions or court rules and ethical codes appropriate to the services that they are providing.

Increasingly, the lack of travel funds for EPA staff or stakeholders is pushing many of these processes to be held via telephone, video or on-line. In the future, facilitators will need skills to design appropriate processes to dialogue and gain input via electronic means or a mixture of in person or electronic processes. General guidelines on the on the integration of technologies into [agreement seeking processes] and relevant practitioner skills are presented in "Guiding Principles for the Use of Technology in ECR Processes," which was developed by the Technology and ECR Coordinating Committee and is available at <http://www.ecr.gov/pdf/GuidingPrinciplesforUsingTechnologyinECRProcesses%28ForDistribution06302011%29.pdf>.

#### **A. CONTRACTOR'S MANAGEMENT PROCEDURES AND SYSTEMS**

Historically, previous contracts have been very complex, involving more than one hundred Task Orders, some with multiple cases or projects assigned to them. In addition, previous contracts have been heavily subcontracted because of EPA's needs for a wide variety of dispute resolution professionals in widely distributed geographic and technically specialized areas. EPA is also aware that the fields of alternative dispute resolution and public involvement are typified by many small firms or sole practitioners, creating consistency and communication challenges.

Costs of operating the systems below shall be assignable to specific Task Orders to the greatest extent possible and documentable. There is no project funding for development of management systems or new service provider roster systems. Management systems that are designed must be compatible with existing EPA systems.

The Contractor shall administer and maintain:

1. A comprehensive project status, deliverable and cost tracking mechanism(s) or system(s) capable of tracking each Task Order and each project and sub-project assigned within a Task Order. The tracking system(s) shall be directly available to CPRC staff and management, the EPA Contract Officer, Project Officer and Task Order Project Officers. The contractor shall participate in a monthly in person meeting with CPRC Project Officers to review the status of every task order based on reports from this system. The tracking system shall also maintain other data needed for CPRC internal and external reporting such as, but not limited to, description of case/project, statutes, goal and venue of project, policy context for the case/project, level of agreement reached (where applicable), type of ADR or PI process, identity of neutral and Agency contacts, sponsoring offices and whether other federal agencies were participating;

2. A comprehensive methodology for expeditiously identifying, matching, selecting and managing facilitators, mediators and other dispute resolution professionals for cases. The method shall be responsive to the needs of EPA and outside parties in identifying a recommended individual or a slate of potential individuals and assisting the parties in retaining a dispute resolution professional or team with adequate skills, knowledge and experience in the process and substantive issues described in a particular task order and for responding to such needs as geographic location, foreign language ability, and cultural sensitivities. The system should be able to respond cost efficiently to search criteria such as type of ADR or PI process, geographical location, substantive expertise.

Existing sources of names and information regarding qualifications of facilitators, mediators and other dispute resolution professionals with skills in environmental conflict resolution known to EPA include the National Roster of Environmental Dispute Resolution Professionals (<www.ecr.gov>), the International Institute for Conflict Prevention and Resolution, Martindale Hubbell Dispute Resolution Directory, the American Arbitration Association and the membership directories of the Association for Conflict Resolution, American Bar Association ADR Section, and the International Association of Public Participation.

3. An evaluation, oversight and quality assurance process for service providers and services performed under each task order to ensure that EPA project managers receive the highest quality services at all times. This system shall be able to provide annual performance data.

4. EPA expects that the contract will need the equivalent of at least one full-time Program Manager. The Program Manager's primary responsibilities shall include contact with EPA contracting and project officer staff, selection and oversight of dispute resolution service providers for individual task orders, oversight of tracking, invoicing and quality control evaluative aspects of this contract. The Program Manager shall have sufficient knowledge of ADR so as to be able to identify, select, manage and evaluate service providers and should have sufficient knowledge of Federal contracting regulations and practices to manage the contractual relationship efficiently (Refer to Labor Categories description). Program Manager hours shall be chargeable to each Task Order to the greatest extent possible and documentable.

#### **B. CONDUCT OF SITUATION ASSESSMENTS**

A well-designed public involvement process or alternative dispute resolution process starts with a situation assessment, also called a stakeholder assessment, or conflict assessment, or convening process. This process or study attempts to map out the sources of differences or conflict, the parties who must be involved in order to resolve or participate in a decision or discussion, and the timeframe and resources needed to conduct a well-designed and managed process.

A situation assessment may take several hours, in the case of an administrative enforcement case where there are only two parties to the negotiation, or it may take several weeks or months as in the case of a technically or politically complex regulation or program. A situation assessment may result in an oral report to the parties with recommendations on design, time and resources or it may involve a carefully written report to all parties which may be made public in order to support a Federal Advisory Committee. A situation assessment is tailored to the size and complexity of the issues and the time and formality desired by the parties. Individual task orders under this contract will specify the detail and timing of the situation assessment.

Tasks performed by the contractor for a Situation Assessment may include but are not limited to:

- Select an appropriate dispute resolution professional or team, taking into account knowledge of the subject, conflicts of interest, availability, and experience in the particular ADR procedure and any other selection criteria that may be specified in the Task Order. In some cases, the contractor shall, if

requested, conduct an initial process with all parties to gather information on the parties' views on appropriate qualifications of the dispute resolution professional. The contractor shall discuss potential areas of conflict of interest with EPA and other parties. Selection of the dispute resolution professional shall be approved by the EPA Project Officer (PO), Task Order Project Officer (TOPO) and program office coordinator, and, if appropriate and timely, the parties to the dispute. This may also include co-facilitation or co-mediation with qualified EPA or federal government staff in convening, facilitation or mediation of a case.

- Meet with EPA PO, TOPO, and program office coordinator to discuss in greater detail the procedural and technical issues and background information.
- Assist the EPA PO, TOPO and program office coordinator in developing a list of potential participants and identifying a tentative set of issues to be addressed.
- With EPA PO, TOPO, and program office staff consultation, prepare and distribute background information on procedural and technical aspects and issues to potential participants in a dialogue or negotiation under exploration.
- Contact potential parties to discuss their possible participation in a particular process. Best conflict, situation or stakeholder assessment practices shall be used in conducting this phase of the convening or conflict assessment. The dispute resolution professional shall discuss the opinions, positions and needs of each party with regard to the issues involved, and both the procedural and substantive technical aspects of the process. The dispute resolution professional shall ask the parties to suggest additional individuals or groups that should be contacted to ensure that the candidate pool for participation is comprehensive. The dispute resolution professional shall ask the parties to identify the issues that should be covered in the process, definitions for measures a successful process and other parties necessary to the success of the process.
- Consult with the parties with regard to the experience, skills and abilities of an acceptable dispute resolution professional for the process and suggestions as to ground rules.
- If initial interviews with the key participants reveal that the process that EPA is initially interested in conducting is not feasible, propose any other useful alternatives suggested by the parties or judged by the contractor to be potentially productive and await EPA's decision on whether to proceed to interview all potential participants.
- Provide regular oral or email reports to the TOPO and the program office contact on the general progress of the convening effort, and/or participate in Agency briefings as requested to provide information on the progress of the convening effort.
- If a meeting with potential participants appears to be useful in convening a process, the dispute resolution professional shall contact potential participants to arrange scoping or organizational meetings and facilitate or preside, along with EPA personnel, at any scoping or organizational meetings. The primary purpose of a scoping meeting is to make a preliminary determination if the parties are interested in the process. The primary purpose of an organizational meeting is to determine if negotiations, dialogue, or information exchange should

proceed, and if so, to determine the appropriate parties, set the discussion agenda and timetable for subsequent meetings and to answer any remaining questions regarding the process.

- Handle all logistics of arranging meetings for participants. This includes scheduling, arranging facilities, equipment and supplies, notifying participants, and providing advance materials.
- Prepare draft summaries or minutes of each meeting and distributing them to the participants for their approval, and distributing final summaries or minutes after comments have been reviewed and incorporated.
- Provide a report to the EPA PO, TOPO, and program office coordinator which summarizes the results of convening, situation assessment or stakeholder assessment discussions including such things as discussions of the chances of a successful agreement seeking or consultative process (regulatory negotiation, policy dialogue, workshop series), recommendations of potential parties at the table, discussion of issues which will bring parties to the table, and any issues which the parties cannot agree to negotiate. This report will be described in the individual task order and may be oral and/or written and will be tailored to the size and complexity of the project or case assigned and the timeframe necessary.
- If an ADR or public involvement process appears to be feasible and that might accomplish joint objectives of EPA and the parties, propose a design for the process including such things as number, length, location and frequency of meetings, discussion of the attributes of an acceptable dispute resolution professional, recommendation of potential participants whom EPA should invite or contact, information or research necessary prior to or during the process, estimated resources (EPA and facilitation) recommended for the success of the process, discussion of measures of success and plan for post-negotiation evaluation.

If the convening, situation or stakeholder assessment report concludes that an ADR or public involvement process is feasible and EPA decides to proceed:

- Provide assistance in identifying and selecting the appropriate dispute resolution professional or team for the process taking into account knowledge of the subject, conflicts of interest, availability, experience in the particular ADR procedure and any other selection criteria that may be specified by the parties, in the conflict assessment or in the Task Order. Often, the dispute resolution professional who conducted the convening or conflict assessment is acceptable to the parties to continue as the mediator or facilitator of the process. The contractor and the CPRC shall determine if this is so prior to proceeding with the project. If the convener is not acceptable, withdraws or cannot continue with the case, the contractor shall consult with CPRC staff, the PO, the TOPO, the program office contact and the parties about the appropriate criteria for selecting a facilitator or mediator for the process. Selection of the dispute resolution professional by the contractor shall be approved by the EPA Project Officer (PO), Task Order Project Officer (TOPO) and program office coordinator, and, if appropriate, the parties to the dispute. This may also include co-facilitation or co-mediation with qualified EPA or federal government staff in convening, facilitation or mediation of a case.
- Provide assistance/support of the convener (if different than the facilitator/mediator) by drawing on the rapport established in the convening phase. This support may include sharing with the facilitator all relevant

perceptions, concerns and other details gathered during the convening phase which are not protected by confidentiality.

- Work with EPA to define roles and responsibilities of all participants in the process including chair persons, designated federal officials, and management.
- Assist EPA in contacting potential parties to obtain commitments to participate in the process if advance commitments are necessary.
- Propose tentative ground rules or operating procedures for participants.
- Suggest a timetable for phases of work if necessary to the design of the process.
- Provide assistance and materials in conducting an orientation or training for the group or for committee members in team-building exercises, consensus-building processes, Federal Advisory Committee Act or negotiated rulemaking procedures prior to the initiation of the process, if necessary.

### **C. DESIGN AND CONDUCT OF ADR FOR AGREEMENT SEEKING PROCESSES**

#### **C.1. Design and Conduct of ADR for Agreement Seeking Processes - National Policy and Regulatory Issues**

Agreement seeking processes conducted at the national program level such as regulatory negotiations and policy dialogues occur in three fairly distinct phases. The first stage is an evaluation of the feasibility and advisability of conducting the negotiation or dialogue also known as a convening assessment or conflict assessment (above). The second stage is actually conducting the negotiation/dialogue. The third and final stage is evaluating and debriefing the negotiation/dialogue. While these phases also characterize ADR conducted at the site level, ADR processes conducted at the national level typically are more labor intensive and may last longer.

The Contractor shall assist in convening and facilitating or mediating agreement seeking processes such as regulatory negotiations, policy dialogues, advisory committees, and other long-term consultative processes. The level of effort expended in convening, facilitating or mediating a case will be in proportion to the scope and intensity of the proposed agreement seeking process. In the case of Regulatory Negotiations, the processes described in the Negotiated Rulemaking Act of 1996 and any associated EPA guidance shall be followed. In the case of established groups giving collective advice to the Agency, the requirements of the Federal Advisory Committee Act shall be followed. Increasingly the lack of funds for travel of EPA or of stakeholders is pushing many of these processes to be held via telephone, video or on-line. Facilitators will need skills to design appropriate processes to conduct dialogues and gain input via electronic means or a mixture of in person or electronic processes.

Tasks performed by the contractor may include but are not limited to:

Situation Assessment - see B. above

Process Implementation:

- Facilitate or mediate all plenary sessions of the negotiations or dialogue. The facilitator shall assist participants in articulating their interest, identifying areas of agreement, and developing consensus solutions to the problems that divide them. The facilitator shall assist participants in overcoming impasse, structuring appropriate agreements, memorializing agreements as agreed to by the parties. The facilitator/mediator keeps the parties talking, listening, and moving--as much as possible--towards consensus. THE FACILITATOR/MEDIATOR SHALL NOT TAKE A POSITION ON THE MERITS OR RECOMMEND TO THE PARTIES WHAT THE SUBSTANTIVE SOLUTION OF AN ISSUE SHOULD BE. The facilitator/mediator shall provide staff support, as necessary, for managing, recording and summarizing meetings.
- At the initial meetings, assist the group in reaching consensus on the ground rules for refining and distributing written protocols reflecting this consensus. Some of these dispute resolution processes may require the drafting and signature of an "ADR or mediation agreement" that documents the parties' agreements regarding dispute resolution process design, timing and costs. The mediator shall assist the parties in drafting and negotiating this ADR or mediation agreement.
- Facilitate or mediate meetings or conference calls or on-line dialogues of break out groups or work groups (self-selected subgroups of the plenary group which address subsets of the issues) and, if several work groups meet simultaneously, providing additional facilitators or support staff to assist other work groups, if the EPA project staff and/or committee determine it useful. THE FACILITATOR SHALL NOT TAKE A POSITION ON THE MERITS NOR RECOMMEND TO THE PARTIES WHAT THE SUBSTANTIVE RESOLUTION OF AN ISSUE SHOULD BE.
- Identify and provide, at the request of the TOPO and the parties, subject matter experts in technical, scientific, economic or other fields related to the substance of the dispute to research, review, analyze facts, or to make presentations to the parties.
- Prepare and present, in consultation with the TOPO and the parties, research, analyses, explanations, summaries, fact sheets, white papers, brochures, social media messages, and other similar collections of data or information needed to educate the parties, or the public as appropriate, as to the substance of the dispute and options for resolving it. These reports shall be submitted first in draft, and when comments have been received and incorporated, in final.
- Establish and/or maintain communication and information links such as web pages, list serves, and other methods of communication between the parties, and the public, as appropriate.
- Handle all logistics of arranging meetings, conference calls or on-line dialogues for participants; this includes scheduling, arranging facilities and notifying participants;
- If appropriate, preparing summaries, next step lists or minutes of each meeting and distributing them to the participants for their approval.
- Communicate with participants between meetings, as needed, to ensure that issues and concerns have been communicated accurately and that participants are adequately prepared for the next meeting.
- Submit information on case status to EPA case-tracking databases in a format accessible to EPA.

- Provide assistance in settling disputes during implementation of the agreement or settlement, if necessary, appropriate, and requested by the parties.
- Assist EPA and other parties in designing and implementing communications and document repository systems such as websites, databases, electronic files for parties to the ADR process to access in order to promote appropriate sharing of information between parties.
- Assist EPA and other parties in writing, assembling comments and changes, and/or editing single text agreement documents or reports.

**Evaluation Phase:**

- Prepare a final report or case study of the process which summarizes what occurred and debriefs and evaluates the process and lessons learned from the point of view of the facilitator or mediator, taking into consideration issues of confidentiality. This report shall be submitted first in draft, and when comments have been received and incorporated, in final.
- Conduct a post-negotiation debriefing with EPA officials including the PO, TOPO and program office contact and management to discuss lessons learned and to discuss any next steps.
- Contribute to or conduct all or parts of an evaluation of the case according to EPA CPRC case-evaluation protocols. When acting as a neutral on a case, completing the evaluation questionnaire, provide names and contact information for case participants, and/or participate in interviews for evaluation purposes. When administering evaluation surveys for the CPRC, achieve a minimum average 70% response rate.

C.2. Design and Conduct of Agreement Seeking Processes - Site, Facility or Geographic Area Negotiations.

EPA Headquarters and Regional Offices are involved in many site-or facility-specific disputes such as those arising from permit issuance and enforcement actions taken under environmental statutes or regulations. EPA is also involved in identification of cleanup or reuse issues under the Brownfields and Superfund programs. In addition, EPA is involved in geographically organized pollution reduction efforts such as National Estuary Program, and other multi-media pollution control and reduction efforts at the local level. Agreement seeking processes conducted at the site or facility level occur in three fairly distinct phases: the first stage is an evaluation of the feasibility and advisability of conducting the negotiation or consultation process also known as a convening situation, stakeholder or conflict assessment (described above); the second stage is actually conducting the dialogue or negotiation; the third and final stage is evaluating the dialogue or negotiation. While these phases also characterize ADR conducted at the national level, ADR processes conducted at the site or facility level typically are performed with a shorter lead time, in a shorter time frame and may involve fewer labor hours (depending on the scope and complexity of the case). Increasingly the lack of travel funds for EPA staff or stakeholders is pushing many of these processes to be held via telephone, video or on-line. Facilitators will need skills to design appropriate processes to dialogue and gain input via electronic means or a mixture of in person or electronic processes.

Tasks performed by the contractor may include but are not limited to:

Situation Assessment (see B above)

Conduct of ADR Process:

- Upon approval of the process recommendation from the Situation Assessment (SA) by the EPA TOPO, in consultation with appropriate EPA personnel and the parties, implement the process as designed. The design may include conference calls, joint session meetings, individual meetings or any other design accepted by the parties. The design may also include an initial mediation and future review or check points, if the parties and the mediator agree that this design is useful. The mediator shall facilitate information sharing between the parties in furtherance of the resolution process. The mediator shall conduct such impasse breaking techniques as are necessary to facilitate settlement of the case. Information shared in confidence with the mediator shall be held to be confidential from any other requests for information or from any other proceedings. THE FACILITATOR SHALL NOT TAKE A POSITION ON THE MERITS NOR RECOMMEND TO THE PARTIES WHAT THE SUBSTANTIVE RESOLUTION OF AN ISSUE SHOULD BE.
- Some of these dispute resolution processes may require the drafting and signature of an "ADR or mediation agreement" that documents the parties' agreements regarding dispute resolution process design, timing and costs. The mediator shall assist the parties in drafting and negotiating this ADR or mediation agreement. THE FACILITATOR SHALL NOT TAKE A POSITION ON THE MERITS NOR RECOMMEND TO THE PARTIES WHAT THE SUBSTANTIVE RESOLUTION OF AN ISSUE SHOULD BE.
- Handle all logistics of arranging meetings, conference calls or electronic communication means for the parties; this includes scheduling, arranging facilities and equipment, and notifying participants.
- Identify and provide, at the request of the TOPO and the parties, subject matter experts in technical, scientific, economic or other fields related to the substance of the dispute to research, review, analyze facts or to make presentations to the parties.
- Prepare and present, in consultation with the TOPO and the parties, research, analyses, explanations, summaries, fact sheets, white papers, brochures, social media messages, web pages, and other similar collections of data or information needed to educate the parties or the public, as appropriate, as to the substance of the dispute and options for resolving it. These reports shall be submitted first in draft, and when comments have been received and incorporated, in final.
- Establish and/or maintain communication and information links such as web pages, list serves, and other methods of communication between the parties and the public, as appropriate.
- Prepare reports, summaries, drafts of agreements as relevant, appropriate and necessary according to the parties and assigned by EPA. Reports shall be presented in draft, and upon incorporation of comments, distributed in final.
- Communicate with parties between meetings, as needed, to ensure that issues and concerns have been communicated accurately and that participants are adequately prepared for the next meeting.

- Provide assistance in settling disputes during implementation of agreements or settlements.

**Case Evaluation:**

- Conduct a process debriefing with EPA officials including the PO, TOPO and program office contact and management to discuss lessons learned and to discuss any next steps.
- Prepare final case studies or process reports including evaluation of the process and recommendations for improvement, follow-up or future activities. This report shall be submitted first in draft, and when comments have been received and incorporated, in final. Contractor shall ensure that all studies and reports are drafted in compliance with the confidentiality provisions of applicable statutes, regulations, and rules, including the Administrative Dispute Resolution Act of 1996.
- Submit information to EPA case tracking databases in a format accessible to EPA.
- Contribute to or conduct all or parts of an evaluation of the case according to EPA CPRC case-evaluation protocols. When acting as a neutral on a case, complete the evaluation questionnaire, provide names and contact information for case participants, and/or participate in interviews for evaluation purposes. When administering evaluation surveys for the CPRC, achieve a minimum average 70% response rate.

**D. DESIGN AND CONDUCT OF CONSULTATION AND INFORMATION EXCHANGE PROCESSES**

**D.1. Design and Conduct of Consultation and Information-Exchange Processes - National Policy and Regulatory Issues**

EPA conducts many consultation and information exchange processes to discuss national regulatory and policy issues. These processes are usually less formal such as: public meetings, technical conferences, facilitated workshops, listening sessions, open houses, forums and roundtables. The proceedings may involve a larger number of parties, and either a more diffuse or a more focused set of issues. The goal is usually not to reach a consensus on the issues, but to fully exchange information, ideas and options, to build upon existing consensus or convergence, and/or to narrow the areas of disagreement. Common to all of these processes is a collaborative approach that seeks to foster an early exchange of information among affected interests, so as to give input to EPA that will lead to regulatory and policy decisions that have the support of affected parties, are more protective of the environment, more cost effective and more implementable. Design of these processes includes a situation, conflict, or convening assessment and analysis of the best methods for meeting the needs of the EPA program. Increasingly, the lack of travel funds for EPA staff or stakeholders is pushing many of these processes to be held via telephone, video or on-line. Facilitators will need skills to design appropriate processes to conduct dialogues and gain input via electronic means or a mixture of in person or electronic processes.

Tasks performed by the contractor may include, but are not limited to:

Situation Assessment (see B above)

Process Implementation:

- Chair all plenary sessions of consultation or collaboration process. The facilitator shall assist participants in articulating their interest, identifying areas of agreement, narrowing areas of disagreement and articulating options and alternatives. THE FACILITATOR SHALL NOT TAKE A POSITION ON THE MERITS NOR RECOMMEND TO THE PARTIES WHAT THE SUBSTANTIVE RESOLUTION OF AN ISSUE SHOULD BE.
- Facilitate meetings of work groups, breakout groups or caucuses if the project plan calls for facilitated workgroup meetings.
- Provide, at the request of the TOPO and the parties, subject matter experts in technical, scientific, economic or other fields related to the substance of the dispute to research, review, analyze facts or to make presentations to the parties.
- Prepare and present, in consultation with the TOPO and the parties, research, analyses, explanations, summaries, fact sheets, white papers, brochures, social media messages, webpages, and other similar collections of data or information needed to educate the parties or the public, as appropriate, as to the substance of the dispute and options for resolving it. These reports shall be submitted first in draft, and when comments have been received and incorporated, in final.
- Establish and/or maintain communication and information links such as web pages, list serves, and other methods of communication between the parties and the public, as appropriate.
- Handle all logistics of arranging meetings, conference calls or electronic communications for participants; this includes scheduling, arranging facilities and equipment and notifying participants.
- Prepare draft summaries or minutes of each meeting and distributing them to the EPA PO, TOPO program office coordinator and participants for comment and upon revision, distributing final summaries or minutes.
- Assist with implementation of agreements as needed.
- Communicate with participants between meetings, if additional meetings are scheduled as a part of the process design, to ensure that issues and concerns have been communicated accurately and that participants are adequately prepared for the next meeting.
- Submit information on case status to EPA case tracking databases in a format accessible to EPA.

Case evaluation:

- Conduct a post collaboration process debriefing with EPA officials including the PO, TOPO and program office contact and management to discuss lessons learned and to discuss any next steps.
- Write final case studies or process reports including evaluation of the

process and recommendations for improvement, follow-up or future activities, taking into consideration issues of confidentiality. This report shall be submitted first in draft, and when comments have been received and incorporated, in final.

- Contribute to or conduct all or parts of an evaluation of the case according to EPA CPRC case-evaluation protocols. When acting as a neutral on a case, complete the evaluation questionnaire, provide names and contact information for case participants, and/or participate in interviews for evaluation purposes. When administering evaluation surveys for the CPRC, achieve a minimum average 70% response rate.

#### D.2. Design and Conduct of Consultation and Information Exchange Processes - Site, Facility or Geographic Area Negotiation

EPA conducts dozens of consultation and information exchange processes for pollution prevention, control, cleanup and reuse at sites and facilities and in geographic areas such as watersheds or estuaries. These processes are usually less formal processes such as: public meetings, technical conferences, facilitated workshops, listening sessions, open houses, forums and roundtables. Some of these proceedings may involve a large number of parties and either a diffuse set of issues. Some of the proceedings may have only a few parties and be very focused on issues such as permits or cleanup plans. Issues tend to be local in nature and identification of local stakeholders, officials, representatives and citizens is key. Often it is advantageous for the dispute resolution professional to be located in the same geographic area so as to understand local cultural, social, economic and environmental issues and norms. It is also advantageous from cost and time considerations to reduce travel costs and travel time. The goal is usually not to reach a consensus on the issues but to fully exchange information, ideas and options, to build upon existing consensus or convergence, and/or to narrow the areas of disagreement. Common to all of these processes is a collaborative approach that seeks to foster an early exchange of information among affected interests so as to give input to EPA that will lead to environmental decisions that have the support of affected parties and are more protective of the environment, more cost effective and more implementable. Design of these processes includes a situation, conflict or convening assessment and analysis of the best methods for meeting the needs of the EPA program. Increasingly the lack of travel funds for EPA staff or stakeholders is pushing many of these processes to be held via telephone, video or on-line. Facilitators will need skills to design appropriate processes to conduct dialogues and gain input via electronic means or a mixture of in person or electronic processes.

Tasks performed by the contractor may include but are not limited to:

Situation Assessment (see B above) as necessary and appropriate in relation to size and complexity.

#### Process Implementation

- Work with EPA and the parties to design a process that meets the goals of the Agency and the parties and construct a mutually acceptable agenda, ground rules and schedule for the meeting(s).
- Chair all plenary sessions of consultation or collaboration process. The facilitator shall assist participants in articulating their interest, identifying

areas of agreement, narrowing areas of disagreement and articulating options and alternatives. THE FACILITATOR SHALL NOT TAKE A POSITION ON THE MERITS NOR RECOMMEND TO THE PARTIES WHAT THE SUBSTANTIVE RESOLUTION OF AN ISSUE SHOULD BE.

- Facilitate meetings of work groups, breakout groups or caucuses if the project plan calls for facilitated workgroup meetings.
- Provide, at the request of the TOPO and the parties, subject matter experts in technical, scientific, economic or other fields related to the substance of the dispute to research, review, analyze facts or to make presentations to the parties.
- Prepare and present, in consultation with the TOPO and the parties, research, analyses, explanations, summaries, fact sheets, white papers, brochures, social media messages, webpages, and other similar collections of data or information needed to educate the parties or the public, as appropriate, as to the substance of the dispute and options for resolving it. These reports shall be submitted first in draft, and when comments have been received and incorporated, in final.
- Establish and/or maintaining communication and information links such as web pages, list serves, and other methods of communication between the parties and the public, as appropriate.
- Handle all logistics of arranging meetings, conference calls or electronic communications for participants; this includes scheduling, arranging facilities and equipment and notifying participants.
- Prepare draft summaries or minutes of each meeting if appropriate and distributing them to the EPA PO, TOPO program office coordinator and participants for comment and upon revision, distributing final summaries or minutes.
- Assist with implementation of agreements as needed.
- Communicate with participants between meetings, if additional meetings are scheduled as a part of the process design, to ensure that issues and concerns have been communicated accurately and that participants are adequately prepared for the next meeting.
- Submit information on case status to EPA case-tracking databases in a format accessible to EPA.
- Conduct a post-collaboration process debriefing with EPA officials including the PO, TOPO and program office contact and management to discuss lessons learned and to discuss any next steps.
- Write final case studies or process reports including evaluation of the process and recommendations for improvement, follow-up or future activities, taking into consideration issues of confidentiality. This report shall be submitted first in draft, and when comments have been received and incorporated, in final.
- Contribute to or conduct all or parts of an evaluation of the case according to EPA CPRC case-evaluation protocols. When acting as a neutral on a case, complete the evaluation questionnaire, provide names and contact information for case participants, and/or participate in interviews for evaluation purposes.

When administering evaluation surveys for the CPRC, achieve a minimum average 70% response rate.

**E. JUST IN TIME OR QUICK RESPONSE DISPUTE PREVENTION AND RESOLUTION PROCESSES**

Many times issues occur or disputes erupt with little lead time to get a dispute resolution professional in place through the standard Task Order issuance process. In these cases, EPA has chosen to issue a "Just-in-Time" or "Quick Response" Task Order which provides for short term services in response to an urgent need. The services ordered under Just-in-Time orders are the same services ordered in sections B and C plus a requirement to report costs and status on a project by project basis in all required reports. When the Task Order is issued, it is for an estimated number of responses to projects or cases over the period of performance; the actual names, descriptions and locations of the cases are named at a future time in a Technical Directive from the Task Order Project Officer.

The Technical Directive provides:

1. Case or project name and location
2. Case or project description and background
3. Desired qualifications of the dispute resolution professional
4. Ceiling amount of funds and/or labor hours and direct costs
5. List and schedule for specific deliverables
6. Case contacts
7. Reporting requirements (budget and status tracking for each project)

Tasks performed by the contractor may include but are not limited to:

- Providing dispute resolution, stakeholder involvement, consensus-building, and conflict analysis, avoidance and resolution services to the EPA TOPO and such Headquarters and Regional staff as may be involved in the assigned cases. Specific tasks may include, but are not limited to:
  - a. identification and selection of appropriate service provider
  - b. situation or conflict assessment and analysis,
  - c. convening appropriate parties,
  - d. design of appropriate processes and interventions,
  - e. design of meeting agendas,
  - f. facilitation of sessions or meetings,
  - g. mediation of disputes,
  - h. synthesis of issues, fact sheets, informational materials
  - i. writing and distributing meeting summaries
  - j. logistics such as, but not limited to: meeting rooms, audiovisual equipment, invitations to participants, other services necessary to accomplishing the agenda,
  - k. contacting parties before and after meetings or sessions,
  - l. coaching parties to prevent or manage conflict.
  - m. training parties in negotiation, conflict management, dispute resolution
  - n. assist in collecting and responding to public comment
  - o. use of electronic conference and meeting media, webinars and other non face-to-face options

- Design a monthly report format that reports on each assigned project with separate budget, expenditure and status reports in addition to tracking the overall budget and progress under the task order, actual hours and percentages spent to-date, remaining hours and budget available.
- Submit a case report for each case assigned unless there is not any substantive outcome (e.g. search for a facilitator, or the project does not move forward).
- Submit information on case status to EPA case-tracking databases in a format accessible to EPA.
- Write the final report including lessons learned, recommendations for improvements in response to quick response tasks. This report shall be submitted first in draft, and when comments have been received and incorporated, in final.
- Contribute to or conduct all or parts of an evaluation of the case according to EPA CPRC case-evaluation protocols. When acting as a neutral on a case, complete the evaluation questionnaire, provide names and contact information for case participants, and/or participate in interviews for evaluation purposes. When administering evaluation surveys for the CPRC, achieve a minimum average 70% response rate.

**F. DESIGN AND CONDUCT OF WORKPLACE DISPUTE PREVENTION AND RESOLUTION PROCESSES**

EPA has dedicated programs to provide ADR assistance for the resolution of both EEO and non-EEO related workplace conflicts. While the majority of EPA's workplace disputes are handled with EPA in-house mediators or collateral duty mediators from the Interagency Sharing of Neutrals Program, there are workplace disputes that the parties elect to have handled by an outside dispute resolution professional. The contractor shall provide mediators, facilitators or other dispute resolution professionals who are experienced in a variety of workplace dispute resolution processes.

Tasks performed by the contractor may include, but are not limited to:

- Conduct an initial assessment of the case through conversations or meetings with the parties to the dispute or situation, exploring whether the issues are ripe for negotiation, whether all of the parties are identified and willing to participate, whether the schedule is appropriate, and discussing the qualifications of an appropriate neutral dispute resolution professional to handle the case.
- Select the appropriate dispute resolution professional or team, taking into account knowledge of the subject, conflicts of interest, availability, experience in the particular ADR procedure and needs of the parties to the dispute. Selection of the dispute resolution professional by the contractor shall be approved by the parties to the dispute. This may also include co-facilitation or co-mediation with qualified EPA or federal government staff in the convening, facilitation or mediation of public meetings, or case negotiations or meditations.
- Contact (in person or by phone) all participating parties to arrange a

mutually acceptable time, place and design for the process and, if the parties are willing, to discuss with them the background of the case.

- Handle all logistics of arranging meetings, conference calls or electronic communications for participants; this includes scheduling, arranging facilities and equipment and notifying participants.
- Implement the ADR design agreed to by the parties. The design may include conference calls, joint session meetings, individual meetings or any other design accepted by the parties. The design may also include an initial mediation and future review or check points, if the parties and the mediator agree that this design is useful. The mediator shall facilitate information sharing between the parties in furtherance of the resolution process. The mediator shall conduct such impasse breaking techniques as are necessary to facilitate settlement of the case. Information shared in confidence with the mediator shall be held to be confidential from any other requests for information or from any other proceedings. THE FACILITATOR SHALL NOT TAKE A POSITION ON THE MERITS NOR RECOMMEND TO THE PARTIES WHAT THE SUBSTANTIVE RESOLUTION OF AN ISSUE SHOULD BE.
- At the request of the parties, assist with drafting documents such as but not limited to an agreement document. The parties may decide to hold such an agreement document confidential.
- The contractor shall ensure that work conducted under this contract is compliant with standard operating procedures of the workplace program for which the services are being provided.
- Contribute to or conduct all or parts of an evaluation of the case according to EPA CPRC case-evaluation protocols. When acting as a neutral on a case, completing the evaluation questionnaire, provide names and contact information for case participants, and/or participate in interviews for evaluation purposes. When administering evaluation surveys for the CPRC, achieve a minimum average 70% response rate.

**G. STRATEGIC PLANNING, ORGANIZATIONAL DEVELOPMENT AND CAREER DEVELOPMENT COACHING SUPPORT**

While EPA has both internal and other contractual sources of expertise in strategic planning and organizational development, there are times when EPA program offices need access to facilitators who have experience in both organizational development and environmental issues. In addition, EPA encourages individual staff and management personnel to develop skills in collaboration, dispute resolution and management, leadership, team and group management, etc. While EPA has internal and other sources of expertise in individual coaching in these areas, employees and managers may opt to obtain external confidential expertise in conflict and leadership and executive coaching.

Tasks performed by the contractor may include, but are not limited to:

- Select the appropriate professional or team, taking into account knowledge of the subject, conflicts of interest, availability, experience in the particular procedure, and any other selection criteria that may be specified in the Task Order. Selection of the professional by the contractor shall be approved by the EPA Project Officer (PO), Task Order Project Officer (TOPO) and program office coordinator.

- Assist the EPA PO, TOPO and program office coordinator in developing a list of potential group or individual participants and identifying a tentative set of issues, subjects or skills to be addressed.
- In consultation the EPA PO, TOPO and program office coordinator, prepare and distribute background information on the subject matter or issues to participants.
- Contact potential participants to discuss the issues, schedule and outcomes of the process and the needs of the participant in the process.
- Work with EPA and the parties to design a process that meets the goals of the Agency, and construct a mutually acceptable agenda, ground rules and schedule for the meeting(s).
- Chair all plenary sessions of consultation or collaboration process. Facilitate meetings of work groups, breakout groups or caucuses if the project plan calls for facilitated workgroup meetings. The facilitator shall assist participants in articulating their interest, identifying areas of agreement, narrowing areas of disagreement and articulating options and alternatives. THE FACILITATOR SHALL NOT TAKE A POSITION ON THE MERITS NOR RECOMMEND TO THE PARTIES WHAT THE SUBSTANTIVE RESOLUTION OF AN ISSUE SHOULD BE.
- Handle all logistics of arranging meetings, conference calls or electronic communications for participants; this includes scheduling, arranging facilities and equipment and notifying participants.
- Provide, at the request of the TOPO and the parties, subject matter experts in technical, scientific, economic or other fields related to the substance of the dispute to research, review, analyze facts, or to make presentations to the parties.
- Establish and/or maintain communication and information links such as web pages, list serves, and other methods of communication between the parties and the public.
- Prepare draft summaries or minutes of each meeting if appropriate and distributing them to the EPA PO, TOPO program office coordinator and participants for comment and upon revision, distributing final summaries or minutes.
- Write or assist in compiling reports, summaries, white papers, fact sheets, strategies, planning documents, analyses etc. for review and approval of EPA management. These reports shall be submitted first in draft, and when comments have been received and incorporated, in final.
- Communicate with participants between meetings, if additional meetings are scheduled as a part of the process design, to ensure that issues and concerns have been communicated accurately and that participants are adequately prepared for the next meeting.
- Conduct a process debriefing with EPA officials including the PO and TOPO to discuss lessons learned and to discuss any next steps.
- Assist with implementation of agreements as needed.

- Conduct an evaluation of the process and making recommendations for improvement, follow-up or future activities.
- Write final process report including follow-up or future activities. This report shall be submitted first in draft, and when comments have been received and incorporated, in final.
- Provide confidential coaching services to individual employees, groups, and teams for improving conflict prevention, conflict management, leadership, and management skills

#### **H. ADR AND PUBLIC INVOLVEMENT PROGRAM DEVELOPMENT AND SUPPORT**

Given the nature of its program responsibilities, the EPA Conflict Prevention and Resolution Center and other EPA offices need contract support in the areas of case studies, ADR, collaboration, and/or public involvement program applications, systems design, case and program evaluation, and case or project tracking systems.

Tasks performed by the contractor may include but are not limited to:

##### H.1. Case Studies

- Select a professional(s) with experience in researching and writing case studies, training and outreach materials in short time periods. The appropriate person may have experience as a mediator/facilitator in the appropriate range of cases, good writing skills, and the ability to synthesize significant amounts of material into concise descriptions with lessons learned.
- Propose an outline of a case study or implementing a standard case study format.
- Review documents regarding the case.
- Contact participants and the ADR or public involvement provider in the case to discuss the issues, process, outcomes and lessons learned.
- Distill the information and writing a concise, easy-to-read, informative, attractive case study that meets the goals of the EPA TOPO. This report shall be submitted first in draft, and when comments have been received and incorporated, in final.
- Provide necessary editing, artwork, graphics, photographs, presentation methods, videos as is necessary to meet the needs of the EPA TOPO.
- Provide, at the request of the TOPO and the parties, subject matter experts in technical, scientific, economic or other fields related to the substance of a dispute to research, review, analyze facts, or to make presentations.
- Prepare and present, in consultation with the TOPO, research, analyses, explanations, summaries, fact sheets, white papers, brochures social media messages, web pages, and other similar collections of data or information needed to educate the parties or the public, as appropriate, as to the substance of the

dispute and options for resolving it.

- Establish and/or maintain communication and information links such as web pages, list serves, and other methods of communication between the parties and the public, as appropriate.
- Prepare a final report of the study or studies. This report shall be submitted first in draft, and when comments have been received and incorporated, in final.

#### H.2. ADR, Collaboration, and Public Involvement Applications Research and Systems Design

- Select the appropriate professional or research specialist, taking into account knowledge of the subject matter, type of proceeding, conflicts of interest and availability and any other selection criteria that may be specified in the Task Order. Choice of professional shall be approved by the EPA Project Officer (PO), Task Order Project Officer (TOPO) and program office coordinator.
- Based on the needs stated in the task order, propose a detailed study plan to the EPA PO, TOPO, and program office coordinator.
- Upon EPA PO, TOPO and program office coordinator approval, proceed with the study or pilot project.
- Conduct conversations, interviews, distribute and collect written surveys or other means of gaining input from groups including, but not limited to, some or all of the following: EPA staff, other Federal government staff, industry representatives, small business or small community interests, public interest group representatives (e.g.; environmental, public health), environmental justice interests, state or local officials, dispute resolution professionals who have handled similar disputes.
- Provide, at the request of the TOPO, subject matter experts in technical, scientific, economic or other fields related to the substance of the dispute to research, review, analyze facts, or to make presentations to the parties.
- Prepare and present, in consultation with the TOPO, research, analyses, explanations, summaries, fact sheets, white papers, brochures, social media messages, web pages, and other similar collections of data or information needed to educate the parties or the public as to the substance of the dispute and options for resolving it. These reports shall be submitted first in draft, and when comments have been received and incorporated, in final.
- Establish and/or maintain communication and information links such as web pages, list serves, and other methods of communication between the parties and the public.
- Review literature on similar types of issues or disputes.
- Observe negotiation and dispute resolution proceedings.
- Review documents, correspondence, dockets, case files and information generated by the parties to a dispute.

- Produce such reports or recommendations or documents as are specified in individual Task Orders or agreed to in individual work plans. Reports shall be tailored to the needs and format specified in individual delivery orders. These reports shall be submitted first in draft, and when comments have been received and incorporated, in final.

#### H.3. Evaluations of ADR, Collaboration and Public Involvement Processes:

CPRC's standard operating procedures include evaluating ADR, collaboration, and public involvement cases conducted under this contract. CPRC may choose to perform the evaluation tasks itself, or it may engage the contractor to perform some or all of the tasks. Other EPA offices may also require evaluation of their ADR, collaboration, or public involvement or outreach processes.

Evaluation tasks include but are not limited to:

- Compile or assist the TOPO in obtaining contact information for all participants in the case or process.
- Adapt available standard formats for evaluation, if necessary, for the case being evaluated or assist the TOPO in developing an evaluation format and survey questions and methods.
- Send questionnaires to respondents.
- Track receipt of responses and follow up to maximize the number of responses received. When administering evaluation questionnaires for the CPRC, achieve a minimum average 70% response rate, unless otherwise directed by the CPRC.
- Enter responses into the evaluation database as necessary and provide data as requested by CPRC.
- Conduct standard and specialized data analyses on the data accumulated.
- Prepare reports as specified in the Task Order. These reports shall be submitted first in draft, and when comments have been received and incorporated, in final.

#### H.4 Evaluations of the Contract

CPRC's standard operating procedures include conducting an evaluation of the contract's effectiveness and efficiency. CPRC expects evaluation data to be collected when task order workplans are complete, when task orders are closed, and for all open task orders at least once annually. CPRC also has standard operating procedures for collecting data on individual technical directives issued under just-in-time task orders when the technical directives are in-progress and when they are complete. The contractor's tasks related to evaluating the contract include, but are not limited to:

- Assist in the development of or modification to CPRC's contract evaluation procedures and evaluation questionnaires.
- Identify the status of task orders and technical directives issued under just-in-time task orders to determine when evaluation is needed.

- Identify the appropriate TOPOs and technical directive leads to receive evaluation questionnaires.
- Administer an evaluation questionnaire to each TOPO within 10 business days of workplan approval.
- Administer an evaluation questionnaire to each TOPO within 10 business days of task order closure.
- Administer an evaluation questionnaire at least once annually for all task orders that are in-progress.
- Administer an evaluation questionnaire for all in-progress technical directives issued under just-in-time task orders at least once annually.
- Administer an evaluation questionnaire for all completed technical directives within 10 business days of their completion.
- Achieve a minimum average 70% response rate on all contract evaluation questionnaires, unless otherwise directed by EPA.
- Provide data from the contract evaluation questionnaires in a format and at a frequency specified by EPA.
- Conduct routine surveys of service providers working under the contract to solicit feedback on the performance of the prime contractor, EPA contracting officials, and EPA clients and provide information from these surveys to EPA.

#### H.5. ADR Case Tracking Systems

Several recent Presidential Memoranda, Executive Orders and other directives require EPA to compile data on the use of ADR or other collaborative processes, including the Office of Management and Budget and Council on Environmental Quality's September 2012 Memorandum on Environmental Collaboration and Conflict Resolution (See: [www.whitehouse.gov/news/orders](http://www.whitehouse.gov/news/orders)). CPKC has several ADR case management databases which track the use of ADR in EPA cases. These databases are important in that they produce information for management that details the use and effectiveness of ADR, collaboration, or public involvement in resolving cases or preventing conflict. Occasionally these databases need to be supplemented or redesigned to better capture the types of case information valuable to management. In appropriate assigned circumstances, the contractor shall work with EPA to identify this data and design efficient ways to obtain, track and report the data. When necessary, the contractor shall also assist EPA in obtaining the information, entering the information in the databases, and producing reports. Where the contractor is directed to maintain data in a tracking system, the contractor shall ensure that such data is accurate, complete, and current. The contractor may also be required to assist EPA in graphic design and writing or editing reports.

#### **I. TRAINING SUPPORT**

Contractor support shall be provided in the area of training in negotiation, conflict prevention, dispute resolution processes, conflict coaching, public involvement, consensus building, collaborative decision making, visioning, and other consultative processes and subject matter courses that increase the effectiveness of EPA personnel and programs in their interactions and negotiations with the goal of achieving better, more efficient resolution of environmental issues. Participants in training seminars may be EPA and other federal, tribal, state, local or international government staff partnered with EPA staff in resolving environmental issues; parties to disputes or issues

discussions; groups of stakeholders participating in EPA initiatives; and committee, dialogue or workshop group members as EPA considers necessary and appropriate. Training may be conducted in a number of ways - in person, through telephone, video or web conference, coaching, or through computer-assisted trainings. For program and consistency reasons, training should be designed so that it can be replicated in order to provide national consistency and reduce costs. Training may be designed to be presented by contractor staff, EPA staff or others involved in the program.

Tasks performed by the contractor may include but are not limited to:

- Conduct a needs assessment with EPA management and staff, or with co-regulators or parties and identifying training needs and sources of materials to meet those needs.
- Design, or assist EPA personnel in designing, of in-person or web-based training.
- Produce training materials (handouts, manuals, notebooks, videos, audio, etc.) in appropriate formats for use in such courses. Written (electronically preferred) copies of speaker/trainer notes should be included where possible.
- Provide, at the request of the TOPO and the parties, subject matter experts in technical, scientific, economic or other fields related to the substance of the dispute to research, review, analyze or to make presentations to the parties.
- Prepare and present, in consultation with the TOPO, research, analyses, explanations, summaries, fact sheets, white papers, brochures, social media messages, and other similar collections of data or information needed to educate as to the substance of an issue, problem or dispute and options for resolving it.
- Establish and/or maintain communication and information links such as web pages, list serves, and other methods of communication between the parties and the public.
- Perform logistical tasks involved in conducting the training such as registration and notification of participants, arranging meeting facilities and support, providing required supplies and equipment for presenting the course.
- Teach all or portions of seminars as designed and accepted by EPA. THE TRAINER SHALL NOT TAKE A POSITION ON EPA POLICY OR REGULATIONS OR ON THE MERITS, NOR RECOMMEND TO PARTIES WHAT THE SUBSTANTIVE RESOLUTION OF AN ISSUE SHOULD BE.
- Present off-the-shelf, already designed courses that EPA needs and the provider has access to and expertise in presenting.
- Design and conduct evaluations, and provide results and recommendations regarding the effectiveness of, and changes to, the training or programs.
- Prepare a final report summarizing the training, the evaluations of the participants, and recommendations for changes, additions or deletions in the training agenda, materials or procedures. This report shall be submitted first in draft, and when comments have been received and incorporated, in final.
- Assist EPA in managing a suite of courses or a specialized curriculum of

courses including development of program and course descriptions, information dissemination, assistance in scheduling courses and locations, tracking participants attendance and course completion, program effectiveness evaluation, program reporting.

#### **J. ARBITRATION**

The Administrative Dispute Resolution Act of 1996 provides for both non-binding and binding arbitration of disputes between the Federal government and other parties. Procedures to be followed by the government are stated in some detail in that Act and provide the basis for agency arbitration policies. However, EPA may not use binding arbitration or enter into agreements to do so unless and until it publishes a final policy on binding arbitration.

On May 30, 1989, EPA promulgated rules under the Superfund Amendments and Reauthorization Act that provide procedures for binding arbitration of disputes arising from EPA's Superfund cost recovery program. Cases to be arbitrated under this program must meet strict procedural and substantive requirements, must be for amounts under \$500,000 and must not have been referred to the Department of Justice.

EPA has not conducted any arbitrations under the previous contracts; however, if a policy is approved or parties request arbitration, there may be a need for access to arbitration services.

The contractor shall provide arbitration services for cases identified by EPA attorneys under the Agency's arbitration policy. The parties to an arbitration proceeding shall be entitled to participate in the selection of the arbitrator. The arbitrator shall be a neutral who meets the criteria of the Administrative Dispute Resolution Act. Arbitrators may be retired judges, project managers, accountants, cost control specialist, or others, as considered appropriate by the parties. Arbitrators shall be selected on a case-by-case basis under the procedures in the Administrative Dispute Resolution Act and applicable federal rules and policies. Arbitrators may be dispute resolution professionals listed on this contract or expert consultants retained specifically for a case. Arbitrators shall follow the procedures outlined in the Act, and applicable rules and policies during the arbitration process.

Tasks performed by the contractor may include, but are not limited to:

- Select appropriate arbitrator(s), taking into account knowledge of the subject, conflicts of interest, availability, experience in the particular arbitration procedure and any other selection criteria that may be specified in the Delivery Order or by the parties to the dispute. Choice of arbitrator(s) by the contractor shall be approved by the EPA Project Officer (PO), Task Order Project Officer (TOPO) and program office coordinator and by the parties to the dispute.
- Contact each of the parties' representatives or counsel to explore the needs of each party and to design an appropriate arbitration proceeding.
- Upon approval of the arbitration design by the EPA TOPO, in consultation with appropriate EPA personnel, and the parties, implement the process as designed.
- Handle all logistics of arranging meetings for the parties; this includes scheduling, arranging facilities, and notifying participants.

- Prepare reports, summaries, drafts of agreements as relevant, necessary and assigned by EPA. Reports shall be prepared in draft, and upon incorporation of comments, distributed in final.
- Communicate with parties between meetings, as needed, to ensure that issues and concerns have been communicated accurately and that participants are adequately prepared for the next meeting.
- Provide, at the request of the TOPO and the parties, subject matter experts in technical, scientific, economic or other fields related to the substance of the dispute to research, review, analyze facts, or to make presentations to the parties.
- Prepare and present, in consultation with the TOPO and the parties, research, analyses, explanations, summaries, fact sheets, white papers, brochures, social media, web pages, and other similar collections of data or information needed to educate the parties or the public, as appropriate, as to the substance of the dispute and options for resolving it.
- Issue decisions as built into the design of the process, as directed by the parties, as appropriate under the Administrative Dispute Resolution Act and as provided for under other applicable statutory provisions, regulations or policies.
- Submit information to EPA case tracking databases in a format accessible to EPA within the bounds of confidentiality concerns.
- Write final case studies or process reports including evaluation of the process and recommendations for improvement, follow-up or future activities, taking into consideration issues of confidentiality.
- Conduct all or parts of an evaluation of the case according to EPA CPRC case evaluation protocols.

#### **K. DIRECT SUPPORT AND TECHNICAL SUPPORT**

The success of a dispute resolution or collaborative problem-solving process depends most heavily on correctly identifying the parties, issues and proceeding. However, a number of logistical issues have significant effects on the efficiency and credibility of the proceeding. The issues most often encountered are: appropriate meeting facilities and equipment, access to neutral expert consultants, efficient and well-designed communication and information-exchange systems and processes, and financial support for speaker or expert travel to participate in a proceeding.

##### **K.1. Meeting Logistical Support**

Studies show that the facilities provided for negotiation, and other consultative processes and training affect the efficiency and quality of the proceeding. Many times facilities/equipment/supplies appropriate to the size or purpose of the group are not available at EPA buildings on a timely basis to conduct efficient and high quality proceedings. Meeting rooms must be easily accessible to members of the public without rigorous security screening every time they come and go. Day-long meetings require rooms where participants are allowed to bring in food and drink. Meeting rooms must be adequate in size and number for the

projected use. Equipment (such as projectors, flip charts, markers computers, screens, etc.) appropriate to the purpose of the meeting is key to well run meetings. Access to the Internet or collaborative technology may also be necessary. The Contractor shall obtain meeting facilities and equipment as ordered in Task Orders through lease or rental arrangements, if they are not available at the EPA or at the Contractor's facilities. The Contractor shall use the EPA Green Meetings and Conferences guidelines when selecting a meeting or conference location. The Contractor is not expected to have to purchase major pieces of equipment for this contract.

Tasks performed by the contractor may include, but are not limited to:

- Ancillary to a dispute resolution, public involvement process or training or other projects ordered under this contract, obtain meeting room facilities, equipment (such as, but not limited to, audio-visual equipment, access to word processing and photocopying equipment), on-line connections and services, supplies and other allowable, miscellaneous services as are determined by the EPA TOPO to be appropriate and necessary in helping the parties achieve the goals of the assigned task.

#### K.2. Expert Technical and Scientific Assistance

Conflicting factual assertions sometimes arise that may require evaluation, assessment, research, information gathering, verification, calculation, analysis, etc. by a specialist in the narrow field of concern. This specialist is most valuable if he/she is not affiliated with any of the parties to the negotiation, dialogue or dispute. For example, a committee or group of parties may require specialized advice on statistical sampling methods, economic analyses, or chemical or biological analytical test methods who has not been previously retained or used by any of the parties and can be considered by all parties as neutral. Or a group of parties or committee may find that using a panel of experts whose expertise and opinions vary may bring to light all of the possible sides of an issue in one place or time.

Tasks performed by the contractor may include, but are not limited to:

- Ancillary to a dispute resolution or public involvement process or training or other projects ordered under this contract, provide assistance in locating, retaining and managing subject matter experts in such fields as statistics, economics, engineering, medicine, toxicology, epidemiology, agriculture, and other technical or specialized fields. Such support shall require the advance approval of the Task Order Project Officer, Project Officer and Contracting Officers. The contractor may need to consult with parties to the dispute in identifying the experience, education, knowledge, and skills required of the expert and to further define the scope of the expert's work. Reimbursing travel and other related direct expenses of such consultants and experts.

#### K.3. Administrative Assistance

There are times when it is necessary for the Agency to assist non-federal parties in attending negotiations or dialogues to have a balance of interest groups present. If a technical expert or consultant under this contract

needs to travel to make a presentation or participate on a panel discussion or site visit, the travel costs can be covered in a Task Order. The Federal Advisory Committee Act and the Negotiated Rulemaking Act both authorize travel reimbursement to participants in a negotiation or Committee. However, Agency policies do not allow contractors to reimburse expenses of participants; this travel must be provided by Agency "invitational travel orders." The contractor may assist the Agency in making the travel arrangements and completing the invitational travel documents for participants who are recipients of invitational travel orders.

Tasks performed by the contractor may include, but are not limited to:

- Reimburse non-federal technical experts, panel members, speakers, etc. for travel expenses and other direct costs incurred in providing services under a Task Order.
- Ancillary to a dispute resolution process, public involvement process or training or other projects ordered under this contract, assist Agency officials or staff in completing the arrangements and documents for EPA paid invitational travel for participants in a dispute resolution, consensus-building or collaborative process.
- If Agency policies are revised, reimburse authorized non-Federal participants for travel expenses incurred in participating in such proceedings, when necessary, appropriate and assigned in the Task Order. The EPA PO, TOPO, and program office coordinator shall ensure that such assistance is allowable and appropriate under the Federal Advisory Committee Act, the Administrative Dispute Resolution Act, the Negotiated Rulemaking Act and/or other statutory or regulatory authorities.

#### K.4. Communications Assistance

Many projects, groups of parties or committees need assistance in setting up adequate communications processes or jointly available collections of documents or information. The most common ways to accomplish this are via document repositories, teleconference or video conference calls, email groups, pod-casts, on-line dialogues, text messages, help lines, chat rooms, and social media collaboration technology. The contractor shall assist EPA in arranging teleconference calls or video conference calls or other electronic conversations as needed. Increasingly, these communications processes include web sites, list serves and on-line dialogues, which connect the parties via computers. These communications methods can help reduce the need to travel and meet face to face and may reduce dispute resolution process costs and increase the effectiveness and efficiency of communication, information exchange and education. Contractors may also assist in setting up document repositories and in staffing help lines.

Tasks performed by the contractor may include, but are not limited to:

- Ancillary to a dispute resolution process, public involvement process or training or other projects ordered under this contract, assist the EPA TOPO in designing and implementing efficient and effective communications, information exchange and education processes such as document repositories, help lines, teleconference calls, video conference calls and electronic communications

through web sites, list serves, on-line dialogues, pod-casts, or text messages, etc.

- Ancillary to a dispute resolution process, public involvement process or training or other projects ordered under this contract, assist EPA in gathering and responding to public comment when appropriate.

#### K.5. Writer/Editor and Document Design Assistance

Good public involvement processes and dispute prevention and resolution processes require good bases of information on the technical, scientific, programmatic and policy issues under discussion. Frequently, EPA's or other parties' material is too technical to be easily understood by all stakeholders, leading to misunderstandings or difficult relationships. Design of good written communications is essential to prevention and resolution of disputes and to getting the most out of a stakeholder involvement process. The contractor shall provide access to good technical and scientific writer editors who can assist EPA in designing the best information available.

Tasks performed by the contractor may include, but are not limited to:

- Design, write, edit, research fact sheets, brochures, white papers, analyses, data presentations, meeting presentations, webcasts, videos, on line postings, social media messages, webpages, and other documents, presentations or papers necessary to educate parties in a potential or actual dispute or issue in controversy regarding the programmatic, scientific or technical information, policy or factual matters. These reports shall be submitted first in draft, and when comments have been received and incorporated, in final.