

There are five elements of a mini-trial. They are: *involving top management; limiting the time of a mini-trial; conducting an informal conference; holding non-binding discussions; and considering guidance from a neutral advisor.* Each of the elements may be tailored to fit the dispute at issue.

Finally, the discussions at the conference are kept confidential. Neither party may use any statements made at the conference in subsequent litigation as evidence of an admission by the opposition.

Non-binding arbitration. The next alternative method of contract dispute resolution that the Corps may use is a non-binding arbitration. Binding arbitration is not open to the Corps in contracting claims.

The arbitrator is an independent third party, selected jointly by the parties, who makes a non-binding advisory recommendation. This method differs from the mini-trial, which involves representatives of senior management from both sides who end up making a decision that resolves the dispute.

Mediation. Mediation involves the use of a neutral third party who tries to bring about a negotiated settlement. The mediator does not try to reach a decision on the merits of the dispute. Other forms of ADR, such as arbitration or mini-trials, result in a third-party making a recommendation or non-binding settlement suggestion. A mediator's role is to help the parties reach a mutually agreeable resolution of the dispute.

Partnering. The USACE has introduced an innovative program called Partnering. Partnering seeks to avoid disputes from even starting by establishing a good relationship between the Corps and the contractor from the beginning of the project. Its goal is dispute *prevention*. Partnering seeks to create a cooperative attitude in completing government contracts by encouraging the parties to change from the more traditional adversarial roles to a more cooperative team-based approach. There are three steps involved in establishing a partnering relationship between the Corps and the contractor:

- establishing a new relationship through personal contact between members of the management team at the Corps and the contractor;
- crafting a joint statement of goals for both of the parties; and