

embargoes are examples of "excusable delays." Contractors are "compensated" for excusable delays by the addition of time to the contract delivery schedule.

RESOLVING PROBLEMS

Informal Solutions

Using Informal Lines of Communication. The best way to resolve construction problems is informally with the contracting officer. Contracting officers generally feel that they are fair to their contractors. They are not happy about going through the claims process with its attendant paperwork burden. The claims process also involves their supervisors, agency lawyers, and perhaps auditors. The more people involved, the less control the contracting officer retains over the project. Accordingly, they welcome reasonable attempts to settle disputes. Keeping open lines of communication between the U.S. government and your company remains the best way of resolving problems.

Conflict Resolution. The Corps has been using alternative dispute resolution (ADR) methods to resolve disputes since the mid-1980s. The ADR methods that the Corps have used include mini-trials, non-binding arbitration, mediation, dispute review panels, and facilitation.

ADR is not a replacement for traditional negotiations between the parties to a dispute. Negotiations have been used successfully to resolve numerous contract disputes and will continue to be the method of choice in the future. However, negotiations alone have not slowed the rising caseloads at boards of contract appeals and the courts or reduced burdens of time-consuming and costly discovery. ADR methods have proven necessary.

Mini-trial. The first ADR method used by the Corps of Engineers to resolve a contract dispute was the mini-trial. Not actually a "trial," the mini-trial is a structured negotiating process that uses a blend of traditional negotiations, mediation, and arbitration. The case is heard informally in front of a neutral advisor by representatives of the parties who will attempt to negotiate a settlement. The mini-trial has been defined by the Corps as a "voluntary, expedited and nonjudicial procedure whereby top management officials for each party meet to resolve disputes."