



The Guided Choice Procedures for Mediation

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The Guided Choice Procedures for Mediation

Owners, Contractors, Architects and Engineers should include a mediation agreement in contracts of all tiers. In the absence of such agreement being included in a standard form contract, a suggested provision is:

If a dispute arises out of or relates to this contract, or the breach thereof, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association¹ under its Construction Mediation Procedures² before resorting to arbitration, litigation, or some other binding dispute resolution procedure. The parties involved may agree to use another administrative agency other than AAA. The parties will request that the case be administered by the Guide Choice Process.

- 1) Upon initiation of mediation by any party, each of the parties who have agreed to mediate, shall confidentially confer with the mediator for the purpose of authorizing the mediator to (a) conduct a confidential investigation of the causes of the current settlement impasse; and (b) report to the parties on a suggested settlement process based on that investigation.
- 2) If the mediator reports that the dispute is not ready for settlement negotiations until further information is exchanged, the mediator shall facilitate the exchange of that information among the parties on a prompt and efficient basis for the purpose of settlement. The mediator will work with the parties to determine the earliest time for settlement negotiations to commence.
- 3) After settlement negotiations commence, if the settlement

¹ The use of AAA is suggested because of the availability of their panel of qualified mediators on a national and international basis. AAA is committed to the use of the Guided Choice process when requested. Also AAA's filing fee to commence mediation is nominal.

² Regardless of whether or not the mediation is administered by AAA it is important that a comprehensive set of mediation rules be part of the agreement to mediate. Incorporating the AAA rules would cover the important subject of confidentiality. The parties are also free to develop their own rules.

process experiences impasse, the parties shall continue to work with the mediator to determine whether such impasse may be overcome by further information exchange. If the parties so determine, the mediator shall facilitate a further exchange of information.

- 4) If the parties determine that impasse during negotiations cannot be overcome without use of arbitration or litigation to conduct discovery or determine legal issues, the parties will work with mediator to customize those processes for promptness and efficiency. The parties obligation to arbitrate can only be based on an agreement to arbitrate. This agreement may be based on existing agreements, court order or by an agreement of submittal.
- 5) In the event that the parties, or any of them, determine, in their sole discretion, that arbitration or litigation is necessary, the parties will continue to work with the mediator to find opportunities to resume settlement discussions.
- 6) All exchanges of information during the mediation process will be conducted promptly and efficiently. They shall be without prejudice to further discovery if the dispute is not settled.

For further information on the Guided Choice process see the website of the Guided Choice Interest Group at www.gcdisputeresolution.wordpress.com

