

# On Mediation of Equipment Contract Dispute

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**Abstract.** The mediation is one of the basic ways to solve the equipment contract disputes. The mediation involves the good offices of a third party to facilitate the parties to the dispute to voluntarily reach a settlement agreement. The whole process of the equipment contract dispute settlement can be mediated. And the mediation of the equipment contract disputes should follow the principle of legality, seeking truth from facts and objectivity and justice.

## 1 Introduction

The Equipment contract dispute refers to the dispute between the parties to the equipment contract caused by the entry into force, performance, modification, rescission and termination of the equipment contract. After the equipment contract is signed, both parties hope to strictly fulfill the rights and obligations stipulated in the contract. But in the practice of the equipment construction, due to various reasons, there may be a variety of disputes during the performance of the equipment contract after signing. The scope of the equipment contract disputes is extensive, covering the whole process of the equipment contract from establishment to termination. Once the equipment contract dispute is not settled properly, it will not only affect the normal performance of the equipment contract, but also affect the realization of the national defense construction goal. It is inevitable to have disputes in the equipment contract, the important thing is how to effectively solve the disputes after the occurrence of disputes. And the mediation is a way to resolve the equipment contract disputes.

## 2 Concept of equipment contract dispute mediation

The mediation is an act by the third party to make both parties of the contract voluntarily reach a settlement agreement. The "third party" here may be any party other than the parties to the contract, including arbitration bodies and courts. And the mediation agreement is not legally enforceable.

The mediation of the equipment contract disputes is one of the basic ways to solve the equipment contract disputes. As a form of the equipment contract disputes, the equipment purchase contract disputes should also be resolved through negotiation, mediation, arbitration, litigation and other means. The equipment procurement

contracts refer to the contracts for pre-research, development, testing, ordering, maintenance and equipment work services concluded directly between the military equipment procurement units and the suppliers. The equipment contract and the equipment purchase contract may be regarded as the same concept. Compared with other methods of the contract dispute settlement, the mediation has the advantages liking the flowing. Firstly, the mediation has greater flexibility in organizational form, location selection, coordination methods and other aspects, which is conducive to timely and proper settlement of the contract disputes. Secondly, the mediation comes from the willingness of both parties in dispute. The initiative and enthusiasm of this kind of thought can greatly contribute to the reconciliation of both parties. Thirdly, the mediation generally does not involve sharp arguments and cross-examination in litigation. It is easy to create a friendly atmosphere of mutual understanding and compromise, which helps to peacefully resolve disputes and assume corresponding responsibilities. [1]

Here's an example. A model number general engineering repair vehicle, which was in charge of acceptance in the military representative's office in a certain region, suddenly broke the fork of the force harvester during a military exercise, causing the generator to be abandoned and the whole vehicle to be unable to work. Informed of the situation, the military representative's office convened an accident analysis meeting attended by the use of the army, the military generation office and the production factory. At the meeting, the user said that the vehicle was used strictly in accordance with the deterioration procedure of the operating rules and that the user had done nothing wrong, so the cost of repairing the vehicle of 280,000 yuan should be borne by the manufacturing plant. The manufacturing plant considers the car to be a finished product and the contract has been fulfilled. The accident is caused by the user's improper operation, so the loss should be borne by the user himself. Neither side can

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give the other completely convinced of the evidence and who are not convinced of each other. Since the negotiation failed, the two sides decided to ask a competent department of defense science, technology and industry to mediate. The competent authorities conducted meticulous pre-mediation preparations and organized a quality problem handling working group with the participation of factory leaders, technical experts and military representatives. The working group rushed to the troops and made three decisions based on the actual situation at the time. First, the quality of the equipment is a major issue, and any activities of both sides should ensure that quality comes first. The working group recommended that a test be organized on some components of the vehicle. Second, organize as many devices as possible to participate in the test to ensure the accuracy of the test data, so that the experimental results can be accepted by both parties. Second, let multiple devices participate in the test to ensure the accuracy of the test data, so that the experimental results can be accepted by both parties. Third, if the test results prove that the user is correct, the factory shall bear all the maintenance costs and test costs of the vehicle. On the contrary, if the test proves that the factory's analysis is correct, the user shall bear all costs. Both the factory and the user agreed that the mediator's decision was reasonable, and the trial was organized as planned. The test results proved that the accident was due to the quality of the equipment and the manufacturers acknowledge the fact.

The case fully shows that the mediation is an effective way to solve the equipment contract disputes. The mediator should be able to weigh the pros and cons of each party in a specific situation and make the project as specific and accountable as possible. The mediation decision is not only correct, but also meticulous. The mediator has taken the initiative in the work and is responsible for the country, the products and the manufacturers, which reflects the strong sense of responsibility and superb artistic work. Mediation in the case has four features shows in the mediation of the case. First, the mediator can organize and make decisions in time, which provides time guarantee for resolving conflicts as soon as possible. Second, the mediators made the accurate judgments on the problems and made prompt decisions, and came up with specific measures to solve the disputes, which provided a way to solve the problems. Third, the mediators bear in mind the overall situation and are highly responsible for the national interests and the military building. Last, the mediators adhere to the principle of seeking truth from facts, objectivity and fairness to resolve the conflict between the two sides, which is a concrete manifestation of their responsibility for the interests of the state, the military and the factory.

### **3 Scope of application and basic principles of equipment contract dispute mediation**

After an equipment contract dispute occurs, the negotiation should be selected as the pre-procedure for the settlement of other disputes. Only when the negotiation is not possible or negotiation fails, the parties can start other dispute settlement procedures, such as the mediation. However, mediation is not the only option that cannot be negotiated. Mediation should also be carried out on the basis of mutual willingness, including the form and time of mediation and the choice of a third party. However, the mediation is not the only option that cannot be negotiated. The mediation should also be carried out on the basis of mutual willingness, including the form and time of the mediation and the choice of a third party. The mediation has a wide range of the application and stages, which can be carried out in each process of the equipment contract without violating laws and regulations and harming the interests of any party. And the mediation can run through the whole process of the dispute resolution, even before the arbitration award or lawsuit judgment, the mediation can be conducted by the arbitration and the court staff. In view of the flexibility of the mediation, the following principles should be developed as principles to be followed in practice. [2]

#### **3.1 Principle of seeking truth from facts**

When the parties to an equipment contract dispute fail to negotiate, in fact, many details of the dispute are already clear. When a third party intervenes in mediation, it should adhere to objective facts and insist on seeking truth from facts.[3] This is not only a requirement for the third party, but also for the parties to the dispute. The military and the equipment research and development undertaking units shall ensure the authenticity and legality of the materials provided to third parties.

#### **3.2 Principle of fairness and legality**

As for the result of the mediation, the third party shall, on the basis of ascertaining the facts, be impartial and guide the disputing parties to make concessions so as to reach the balance point of the interests of both parties, and guide the faulted party to clarify its responsibilities and take the initiative to assume mutually beneficial responsibilities. The result of the mediation shall be subject to compliance with the laws and regulations.

#### **3.3 Principle of voluntariness and efficiency**

Whether to initiate the mediation procedures shall be decided by both parties voluntarily. The mediation process, method and time determined by the third party organization shall be convenient for both parties to participate in. In order to save resources of the third party, during the mediation process, both parties can be guided to restart the negotiation procedure at any time,

so as to achieve the goal of saving social costs.[4] At the same time, in order to ensure the efficient resolution of the dispute, the third party shall not prevent any party from choosing such remedies as arbitration or litigation on the grounds that it is in the process of mediation.

## **4 Choice of third party of equipment contract dispute mediation**

The position of the third party is very important in the whole process of the mediation, which plays the role of connecting the past and the future, organizing and coordinating, and mastering the facts. The choice of the third party should be based on the willingness of both parties to the dispute. Any party to the dispute has the right to choose a third party or reject the third party chosen by the other party. To have credibility, the third party must be recognized by both parties. In principle, there is a wide range of the options for the third parties, as long as the third party to the dispute are willing and affirmed by both parties. But considering the particularity of the equipment contract, the scope of the third party should be limited. Generally speaking, if the equipment contract dispute fails to be negotiated, it shall be mediated by the department responsible for the equipment work of the superior unit. [5]

With the gradual advance of the military-civilian cooperation, in addition to military groups as the parties to the equipment contract, more and more private enterprises enter the equipment market, and they also become the parties to the equipment contract. Therefore, in order to enhance the credibility of the third party, the contract management department of the local equipment undertaking and production unit, that is, the industrial and commercial administration department of the place where the contract is performed, can be included in the scope of the third party. However, the equipment contract disputes involving the equipment procurement secret or undisclosed procurement information shall be excluded.

## **5 Procedure of equipment contract dispute mediation**

### **5.1 Preparation before mediation**

The process of the equipment contract mediation is actually a process in which the social organizations or third parties do in-depth and detailed ideological work on both sides of the equipment contract dispute. The effect of the mediation is directly related to whether the preparatory work before the mediation is sufficient.

### **5.2 Working out mediation plan**

In order to make the two parties reach an agreement, the mediators should grasp the psychology of the two parties according to the principle of mediation, and analyze the scope and degree of their possible acceptance for mediation. Only when the content of mediation program

has certain flexibility and flexibility can it deal with various problems that may occur in the process of mediation.

### **5.3 Going to mediation**

The mediation should adhere to the principle of seeking truth from facts. The mediating party shall, on the basis of ascertaining the facts and clarifying the responsibilities, carry out legal publicity and policy education to the parties concerned in the dispute regarding the problems in the equipment contract dispute, so as to make the fault party realize the illegality of its behavior and the responsibility it should bear. Then the mediator guides the parties to make concessions to each other and reach an agreement on a voluntary basis.[6]

### **5.4 Ending mediation**

The mediation comes to an end if the two parties to the dispute reach an agreement. If one or both parties refuse the mediation, or if repeated mediation fails to reach a settlement agreement, the mediation procedure shall be terminated. Then one or both parties to the equipment contract may seek to resolve the dispute through other means.

## **6 Result of equipment contract dispute mediation**

If an agreement is reached through the mediation of the third party over an equipment contract dispute, a mediation agreement shall be made. If a settlement is made without the participation or guidance of a third party, the agreement generated is not equivalent to a mediation agreement.

### **6.1 Signing of mediation agreement**

The mediation agreement shall be signed by the three parties in person and by the legally authorized representatives of both parties or in the name of the unit. The third party as a mediation witness should also sign an agreement. The Agreement is made in triplicate, with each party keeping one copy.

### **6.2 Legal effect of mediation agreement**

The agreement formed by litigation mediation and arbitration mediation shall be judicially binding on both parties. The mediation agreement formed by the superior unit of the military equipment procurement or the local business administration unit is not juridically binding, but it has certain witness effect and is the basis for taking administrative measures.[7] The mediation agreement shall come into force on the date of signing or at the time agreed upon by both parties. The mediation agreement has no legal guarantee effect. The mediation agreement has no legal guarantee. If both parties agree that it is necessary, they can apply for judicial confirmation in the

court of the place where the contract is performed within 7 days after the signing of the conciliation statement, and the statistical data shall be legally effective, except for the disputes involving secret procurement or those which are not to be made public.

### 6.3 Implementation of mediation agreement

The third party shall urge the parties to the dispute to perform the agreement according to the content of the mediation agreement.[8] If one party in dispute refuses to perform or fails to fully perform the agreement with legal guarantee effect, the other party may apply to the court for enforcement. If the parties go back on their word of signing the agreement, the mediation may be conducted again or other disputes may be settled.

## 7 Points for attention in equipment contract dispute mediation

The mediation should pay attention to the following aspects. The mediation should follow the principle of legality. The content of a conciliation agreement must conform to the provisions of laws, administrative regulations and policies, and must not harm the interests of the state, the public and others.[9] The Preparations should be made before the mediation. For example, the mediating party should understand and be familiar with the whole process and various evidence of the equipment contract dispute, identify the focus of the dispute between the two parties and the similar requirements of the two parties, determine the methods and ways to guide the two parties to reach an agreement, carefully analyze the case, distinguish the responsibilities of the two parties in the contract dispute, and determine the applicable laws, regulations and relevant provisions. The conciliation party shall also adhere to the principle of seeking truth from facts, being objective and just, and organize the parties to reach a settlement through negotiation on the basis of ascertaining the facts, clarifying right and wrong and clarifying responsibilities. If the equipment department or the competent department of science, technology and industry for national defense is presiding over the mediation, the mediation department may issue a written decision or a conciliation statement independently or jointly after reaching an agreement. If the equipment contractor has any objection to the written decision or the conciliation statement, it may apply for reconsideration to the next higher department.[10] If no mediation agreement can be reached, the mediation procedure shall be terminated in time to prevent unnecessary delay, so as not to delay the rights and interests relief of the equipment contract subject.

## 8 Conclusion

The mediation of the equipment contract disputes is one of the basic ways to solve the equipment contract disputes. The mediation of the equipment contract

disputes usually goes through such procedures as preparation before the mediation, the formulation of the mediation plan, the mediation and termination of the mediation. The content of a conciliation agreement must conform to the provisions of laws, administrative regulations and policies, and must not harm the interests of the state, the public and the interests of others. The mediation should follow the principle of legality, be realistic, objective and fair.

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