

(e) Non-binding ADR techniques are not mutually exclusive, and may be used in combination if the parties agree that a combination is most appropriate to the dispute. The techniques to be employed must be determined in advance by the parties and shall be expressly described in their ADR agreement. The agreement may provide for the use of any fair and reasonable ADR technique that is designed to achieve a prompt resolution of the matter. An ADR agreement for non-binding ADR shall provide for a termination of ADR proceedings and the commencement of adjudication under the Adjudicative Process, upon the election of any party. Notwithstanding such termination, the parties may still engage with the ODRA in ADR techniques (neutral evaluation and/or informal mediation) concurrently with adjudication.

(f) Binding arbitration is available through the ODRA, subject to the provisions of applicable law and the ODRA Binding Arbitration Guidance dated October 2001 as developed in consultation with the Department of Justice.

(g) The parties may, where appropriate in a given case, submit to the ODRA a negotiated protective order for use in ADR in accordance with the requirements of § 17.9.

§ 17.39 Confidentiality of ADR.

(a) The provisions of the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571, *et seq.*, shall apply to ODRA ADR proceedings.

(b) The ODRA looks to the principles of Rule 408 of the Federal Rules of Evidence in deciding admissibility issues related to ADR communications.

(c) ADR communications are not part of the administrative record unless otherwise agreed by the parties.

Subpart E—Finality and Review

§ 17.41 Final orders.

All final FAA orders regarding protests or contract disputes under this part are to be issued by the FAA Administrator or by a delegate of the Administrator.

§ 17.43 Judicial review.

(a) A protester or contractor may seek review of a final FAA order, pursuant to 49 U.S.C. 46110, only after the administrative remedies of this part have been exhausted.

(b) A copy of the petition for review shall be filed with the ODRA and the FAA Chief Counsel on the date that the petition for review is filed with the appropriate circuit court of appeals.

§ 17.45 Conforming amendments.

The FAA shall amend pertinent provisions of the AMS, standard contract forms and clauses, and any guidance to contracting officials, so as to conform to the provisions of this part.

§ 17.47 Reconsideration.

The ODRA will not entertain requests for reconsideration as a routine matter, or where such requests evidence mere disagreement with a decision or restatements of previous arguments. A party seeking reconsideration must demonstrate either clear errors of fact or law in the underlying decision or previously unavailable evidence that warrants reversal or modification of the decision. In order to be considered, requests for reconsideration must be filed within ten (10) business days of the date of issuance of the public version of the subject decision or order.

Subpart F—Other Matters

§ 17.49 Sanctions.

If any party or its representative fails to comply with an Order or Directive of the ODRA, the ODRA may enter such orders and take such other actions as it deems necessary and in the interest of justice.

§ 17.51 Decorum and professional conduct.

Legal representatives are expected to conduct themselves at all times in a civil and respectful manner appropriate to an administrative forum. Additionally, counsel are expected to conduct themselves at all times in a professional manner and in accordance with all applicable rules of professional conduct.

§ 17.53

§ 17.53 Orders and subpoenas for testimony and document production.

(a) Parties are encouraged to seek cooperative and voluntary production of documents and witnesses prior to requesting a subpoena or an order under this section.

(b) Upon request by a party, or on his or her own initiative, a DRO or Special Master may, for good cause shown, order a person to give testimony by deposition and to produce records. Section 46104(c) of Title 49 of the United States Code governs the conduct of depositions or document production.

(c) Upon request by a party, or on his or her own initiative, a DRO or Special Master may, for good cause shown, subpoena witnesses or records related to a hearing from any place in the United States to the designated place of a hearing.

(d) A subpoena or order under this section may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Product Team, money payments need not be tendered in advance of attendance. The person serving the subpoena or order shall file a declaration of service with the ODRA, executed in the form required by 28 U.S.C. 1746. The declaration of service shall be filed promptly with the ODRA, and before the date on which the person served must respond to the subpoena or order.

(e) Upon written motion by the person subpoenaed or ordered under this section, or by a party, made within ten (10) business days after service, but in any event not later than the time specified in the subpoena or order for compliance, the DRO may—

(1) Rescind or modify the subpoena or order if it is unreasonable and oppressive or for other good cause shown, or

(2) Require the party on whose behalf the subpoena or order was issued to advance the reasonable cost of producing documentary evidence. Where circumstances require, the DRO may act

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upon such a motion at any time after a copy has been served upon all parties.

(f) The party that requests the DRO to issue a subpoena or order under this section shall be responsible for the payment of fees and mileage, as required by 49 U.S.C. 46104(d), for witnesses, officers who serve the order, and the officer before whom a deposition is taken.

(g) Subpoenas and orders issued under this section may be enforced in a judicial proceeding under 49 U.S.C. 46104(b).

§ 17.55 Standing orders of the ODRA Director.

The Director may issue such Standing Orders as necessary for the orderly conduct of business before the ODRA.

Subpart G—Pre-Disputes

§ 17.57 Dispute resolution process for Pre-disputes.

(a) All potential disputes arising under contracts or solicitations with the FAA may be resolved with the consent of the parties to the dispute under this subpart.

(b) Pre-disputes shall be filed with the ODRA pursuant to § 17.59.

(c) The time limitations for the filing of Protests and Contract Disputes established in §§ 17.15(a) and 17.27(c) will not be extended by efforts to resolve the dispute under this subpart.

§ 17.59 Filing a Pre-dispute.

(a) A Pre-dispute must be in writing, affirmatively state that it is a Pre-dispute pursuant to this subpart, and shall contain:

(1) The party's name, address, telephone and Fax numbers and the name, address, telephone and Fax numbers of the contractor's legal representative(s) (if any);

(2) The contract or solicitation number and the name of the Contracting Officer;

(3) A chronological statement of the facts and of the legal grounds for the party's positions regarding the dispute citing to relevant contract or solicitation provisions and documents and attaching copies of those provisions and documents; and