

§ 17.33

14 CFR Ch. I (1–1–10 Edition)

§ 17.33 Election of alternative dispute resolution process.

(a) The Office of Dispute Resolution for Acquisition will make its personnel available to serve as Neutrals in ADR proceedings and, upon request by the parties, will attempt to make qualified non-FAA personnel available to serve as Neutrals through neutral-sharing programs and other similar arrangements. The parties may elect to employ a mutually Compensated Neutral, if the parties agree as to how the costs of any such Compensated Neutral are to be shared.

(b) The parties using an ADR process to resolve a protest shall submit an executed ADR agreement containing the information outlined in paragraph (d) of this section to the Office of Dispute Resolution for Acquisition within five (5) business days after the Office of Dispute Resolution for Acquisition conducts a status conference pursuant to § 17.17(c). The Office of Dispute Resolution for Acquisition may extend this time for good cause.

(c) The parties using an ADR process to resolve a contract dispute shall submit an executed ADR agreement containing the information outlined in paragraph (d) of this section to the Office of Dispute Resolution for Acquisition as part of the joint statement specified under § 17.27.

(d) The parties to a protest or contract dispute who elect to use ADR must submit to the Office of Dispute Resolution for Acquisition an ADR agreement setting forth:

(1) The type of ADR technique(s) to be used;

(2) The agreed-upon manner of using the ADR process; and

(3) Whether the parties agree to use a Neutral through The Office of Dispute Resolution for Acquisition or to use a Compensated Neutral of their choosing, and, if a Compensated Neutral is to be used, how the cost of the Compensated Neutral's services will be shared.

(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 Default Adjudicative Process, upon the election of any party. Notwithstanding such termination, the parties may still engage with the Office of Dispute Resolution for Acquisition in informal ADR techniques (neutral evaluation and/or informal mediation) concurrently with adjudication, pursuant to § 17.31(c).

(f) Binding arbitration may be permitted by the Office of Dispute Resolution for Acquisition on a case-by-case basis; and shall be subject to the provisions of 5 U.S.C. 575(a), (b), and (c), and any other applicable law. Arbitration that is binding on the parties, subject to the Administrator's right to approve or disapprove the arbitrator's decision, may also be permitted.

(g) For protests, the ADR process shall be completed within twenty (20) business days from the filing of an executed ADR agreement with the Office of Dispute Resolution for Acquisition unless the parties request, and are granted an extension of time from the Office of Dispute Resolution for Acquisition.

(h) For contract disputes, the ADR process shall be completed within forty (40) business days from the filing of an executed ADR agreement with the Office of Dispute Resolution for Acquisition, unless the parties request, and are granted an extension of time from the Office of Dispute Resolution for Acquisition.

(i) The parties shall submit to the Office of Dispute Resolution for Acquisition an agreed-upon protective order, if necessary, in accordance with the requirements of § 17.9.

§ 17.35 Selection of neutrals for the alternative dispute resolution process.

(a) In connection with the ADR process, the parties may select a Compensated Neutral acceptable to both, or