

lieu of adjudication in order to resolve the protest; or

(2) Joint or separate written explanations as to why ADR proceedings will not be used and why the Default Adjudicative Process will be needed.

(d) Should the Product Team and protester elect to utilize ADR proceedings to resolve the protest, they will agree upon the neutral to conduct the ADR proceedings (either an Office of Dispute Resolution for Acquisition-designated Neutral or a Compensated Neutral of their own choosing) pursuant to §17.33(c), and shall execute and file with the Office of Dispute Resolution for Acquisition a written ADR agreement within five (5) business days after the status conference. Agreement of any intervenor(s) to the use of ADR or the resolution of a dispute through ADR shall not be required.

(e) Should the Product Team or protester indicate at the status conference that ADR proceedings will not be used, then within ten (10) business days following the status conference, the Product Team will file with the Office of Dispute Resolution for Acquisition a Product Team Response to the protest. The Office of Dispute Resolution for Acquisition may alter the schedule for filing of the Product Team Response to accommodate the requirements of a particular protest.

(f) The Product Team Response shall consist of a written chronological statement of pertinent facts, and a written presentation of applicable legal or other defenses. The Product Team Response shall cite to and be accompanied by all relevant documents, which shall be chronologically indexed and tabbed. A copy of the response shall be furnished so as to be received by the protester and any intervenor(s) on the same date it is filed with the Office of Dispute Resolution for Acquisition, if practicable, but in any event no later than one (1) business day after the date if it is filed with the Office of Dispute Resolution for Acquisition. In all cases, the Product Team shall indicate the method of service used.

(g) Should the parties pursue ADR proceedings under subpart D of this part and fail to achieve a complete resolution of the protest via ADR, the Office of Dispute Resolution for Acquisition,

upon notification of that fact by any of the parties, shall designate a DRO or Special Master for purposes of adjudication under subpart E of this part, and the DRO or Special Master shall convene a status conference, wherein he/she shall establish a schedule for the filing of the Product Team Response and further submissions.

(h) Upon submission of the Product Team Response, the protest will proceed under the Default Adjudicative Process pursuant to §17.37.

(i) The time limitations of this section may be extended by the Office of Dispute Resolution for Acquisition for good cause.

**§ 17.19 Dismissal or summary decision of protests.**

(a) At any time during the protest, any party may request, by motion to the Office of Dispute Resolution for Acquisition, that—

(1) The protest, or any count or portion of a protest, be dismissed for lack of jurisdiction, if the protester fails to establish that the protest is timely, or that the protester has no standing to pursue the protest;

(2) The protest, or any count or portion of a protest, be dismissed, if frivolous or without basis in fact or law, or for failure to state a claim upon which relief may be had;

(3) A summary decision be issued with respect to the protest, or any count or portion of a protest, if:

(i) The undisputed material facts demonstrate a rational basis for the Product Team action or inaction in question, and there are no other material facts in dispute that would overcome a finding of such a rational basis; or

(ii) The undisputed material facts demonstrate, that no rational basis exists for the Product Team action or inaction in question, and there are no material facts in dispute that would overcome a finding of the lack of such a rational basis.

(b) In connection with any request for dismissal or summary decision, the Office of Dispute Resolution for Acquisition shall consider any material facts in dispute, in a light most favorable to the party against whom the request is made.

## § 17.21

(c) Either upon motion by a party or on its own initiative, the Office of Dispute Resolution for Acquisition may, at any time, exercise its discretion to:

(1) Recommend to the Administrator dismissal or the issuance of a summary decision with respect to the entire protest;

(2) Dismiss the entire protest or issue a summary decision with respect to the entire protest, if delegated that authority by the Administrator; or

(3) Dismiss or issue a summary decision with respect to any count or portion of a protest.

(d) A dismissal or summary decision regarding the entire protest by either the Administrator, or the Office of Dispute Resolution for Acquisition by delegation, shall be construed as a final agency order. A dismissal or summary decision that does not resolve all counts or portions of a protest shall not constitute a final agency order, unless and until such dismissal or decision is incorporated or otherwise adopted in a decision by the Administrator (or the Office of Dispute Resolution for Acquisition, by delegation) regarding the entire protest.

(e) Prior to recommending or entering either a dismissal or a summary decision, either in whole or in part, the Office of Dispute Resolution for Acquisition shall afford all parties against whom the dismissal or summary decision is to be entered the opportunity to respond to the proposed dismissal or summary decision.

### § 17.21 Protest remedies.

(a) The Office of Dispute Resolution for Acquisition has broad discretion to recommend remedies for a successful protest that are consistent with the AMS and applicable statutes. Such remedies may include, but are not limited to one or more, or a combination of, the following—

- (1) Amend the SIR;
- (2) Refrain from exercising options under the contract;
- (3) Issue a new SIR;
- (4) Require recompetition;
- (5) Terminate an existing contract for the FAA's convenience;
- (6) Direct an award to the protester;
- (7) Award bid and proposal costs; or

## 14 CFR Ch. I (1–1–03 Edition)

(8) Any combination of the above remedies, or any other action consistent with the AMS that is appropriate under the circumstances.

(b) In determining the appropriate recommendation, the Office of Dispute Resolution for Acquisition should consider the circumstances surrounding the procurement or proposed procurement including, but not limited to: the nature of the procurement deficiency; the degree of prejudice to other parties or to the integrity of the acquisition system; the good faith of the parties; the extent of performance completed; the cost of any proposed remedy to the FAA; the urgency of the procurement; and the impact of the recommendation on the FAA.

(c) Attorney's fees of a prevailing protester are allowable to the extent permitted by the Equal Access to Justice Act, 5 U.S.C. 504(a)(1)(EAJA).

### Subpart C—Contract Disputes

#### § 17.23 Dispute resolution process for contract disputes.

(a) All contract disputes arising under contracts subject to the AMS shall be resolved under this subpart.

(b) Contractors shall file contract disputes with the Office of Dispute Resolution for Acquisition and the CO pursuant to § 17.25.

(c) After filing the contract dispute, the contractor should seek informal resolution with the CO:

(1) The CO, with the advice of FAA legal counsel, has full discretion to settle contract disputes, except where the matter involves fraud;

(2) The parties shall have up to twenty (20) business days within which to resolve the dispute informally, and may contact the Office of Dispute Resolution for Acquisition for assistance in facilitating such a resolution; and

(3) If no informal resolution is achieved during the twenty (20) business day period, the parties shall file joint or separate statements with the Office of Dispute Resolution for Acquisition pursuant to § 17.27.

(d) If informal resolution of the contract dispute appears probable, the Office of Dispute Resolution for Acquisition shall extend the time for the filing of the joint statement under § 17.27 for