

## § 17.27

the contract claim involved. A contract dispute by the FAA against a contractor (excluding contract disputes alleging warranty issues, fraud or latent defects) likewise shall be filed within two (2) years after the accrual of the contract claim. If an underlying contract entered into prior to the effective date of this part provides for time limitations for filing of contract disputes with The Office of Dispute Resolution for Acquisition which differ from the aforesaid two (2) year period, the limitation periods in the contract shall control over the limitation period of this section. In no event will either party be permitted to file with the Office of Dispute Resolution for Acquisition a contract dispute seeking an equitable adjustment or other damages after the contractor has accepted final contract payment, with the exception of FAA claims related to warranty issues, gross mistakes amounting to fraud or latent defects. FAA claims against the contractor based on warranty issues must be filed within the time specified under applicable contract warranty provisions. Any FAA claims against the contractor based on gross mistakes amounting to fraud or latent defects shall be filed with the Office of Dispute Resolution for Acquisition within two (2) years of the date on which the FAA knew or should have known of the presence of the fraud or latent defect.

(d) A party shall serve a copy of the contract dispute upon the other party, by means reasonably calculated to be received on the same day as the filing is to be received by the Office of Dispute Resolution for Acquisition.

### **§ 17.27 Submission of joint or separate statements.**

(a) If the matter has not been resolved informally, the parties shall file joint or separate statements with the Office of Dispute Resolution for Acquisition no later than twenty (20) business days after the filing of the contract dispute. The Office of Dispute Resolution for Acquisition may extend this time, pursuant to § 17.23(d).

(b) The statement(s) shall include either—

(1) A joint request for ADR, and an executed ADR agreement, pursuant to

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§ 17.33(d), specifying which ADR techniques will be employed; or

(2) Written explanation(s) as to why ADR proceedings will not be used and why the Default Adjudicative Process will be needed.

(c) Such statements shall be directed to the following address:

(1) Office of Dispute Resolution for Acquisition, AGC-70, Federal Aviation Administration, 400 7th Street, SW., Room 8332, Washington, DC 20590, Telephone: (202) 366-6400, Facsimile: (202) 366-7400; or

(2) Other address as shall be published from time to time in the FEDERAL REGISTER.

(d) The submission of a statement which indicates that ADR will not be utilized will not in any way preclude the parties from engaging in informal ADR techniques with the Office of Dispute Resolution for Acquisition (neutral evaluation and/or informal mediation) concurrently with ongoing adjudication under the Default Adjudicative Process, pursuant to § 17.31(c).

### **§ 17.29 Dismissal or summary decision of contract disputes.**

(a) Any party may request, by motion to the Office of Dispute Resolution for Acquisition, that a contract dispute be dismissed, or that a count or portion of a contract dispute be stricken, if:

(1) It was not timely filed with the Office of Dispute Resolution for Acquisition;

(2) It was filed by a subcontractor;

(3) It fails to state a matter upon which relief may be had; or

(4) It involves a matter not subject to the jurisdiction of the Office of Dispute Resolution for Acquisition.

(b) In connection with any request for dismissal of a contract dispute, or to strike a count or portion thereof, the Office of Dispute Resolution for Acquisition should consider any material facts in dispute in a light most favorable to the party against whom the request for dismissal is made.

(c) At any time, whether pursuant to a motion or request or on its own initiative and at its discretion, the Office of Dispute Resolution for Acquisition may—

(1) Dismiss or strike a count or portion of a contract dispute;

(2) Recommend to the Administrator that the entire contract dispute be dismissed; or

(3) With delegation from the Administrator, dismiss the entire contract dispute.

(d) An order of dismissal of the entire contract dispute, issued either by the Administrator or by the Office of Dispute Resolution for Acquisition where delegation exists, on the grounds set forth in this section, shall constitute a final agency order. An Office of Dispute Resolution for Acquisition order dismissing or striking a count or portion of a contract dispute shall not constitute a final agency order, unless and until such Office of Dispute Resolution for Acquisition order is incorporated or otherwise adopted in a decision of the Administrator or the Administrator's delegatee.

(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 a proposed dismissal or summary decision.

#### **Subpart D—Alternative Dispute Resolution**

##### **§ 17.31 Use of alternative dispute resolution.**

(a) The Office of Dispute Resolution for Acquisition shall encourage the parties to utilize ADR as their primary means to resolve protests and contract disputes.

(b) The parties shall make a good faith effort to explore ADR possibilities in all cases and to employ ADR in every appropriate case. The Office of Dispute Resolution for Acquisition will encourage use of ADR techniques such as mediation, neutral evaluation, or minitrials, or variations of these techniques as agreed by the parties and approved by the Office of Dispute Resolution for Acquisition. The Office of Dispute Resolution for Acquisition shall assign a DRO to explore ADR options with the parties and to arrange for an early neutral evaluation of the merits of a case, if requested by any party.

(c) The Default Adjudicative Process will be used where the parties cannot achieve agreement on the use of ADR; or where ADR has been employed but has not resolved all pending issues in dispute; or where the Office of Dispute Resolution for Acquisition concludes that ADR will not provide an expeditious means of resolving a particular dispute. Even where the Default Adjudicative Process is to be used, the Office of Dispute Resolution for Acquisition, with the parties consent, may employ informal ADR techniques concurrently with and in parallel to adjudication.

##### **§ 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;