

§ 17.35

(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

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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 may request the Office of Dispute Resolution for Acquisition to provide the services of a DRO or other Neutral.

(b) In cases where the parties select a Compensated Neutral who is not familiar with Office of Dispute Resolution for Acquisition procedural matters, the parties or Compensated Neutral may request the Office of Dispute Resolution for Acquisition for the services of a DRO to advise on such matters.

Subpart E—Default Adjudicative Process

§ 17.37 Default adjudicative process for protests.

(a) Other than for the resolution of preliminary or dispositive matters, the Default Adjudicative Process for protests will commence upon the submission of the Product Team Response to the Office of Dispute Resolution for Acquisition, pursuant to § 17.17.

(b) The Director of the Office of Dispute Resolution for Acquisition shall select a DRO or a Special Master to conduct fact-finding proceedings and to provide findings and recommendations concerning some or all of the matters in controversy.

(c) The DRO or Special Master may prepare procedural orders for the proceedings as deemed appropriate; and may require additional submissions from the parties. As a minimum, the protester and any intervenor(s) must submit to the Office of Dispute Resolution for Acquisition written comments with respect to the Product Team Response within five (5) business days of the Response having been filed with the Office of Dispute Resolution for Acquisition or within five (5) business