

## § 17.39

## 14 CFR Ch. I (1–1–04 Edition)

protective order be issued in connection with the protest, a redacted version of the findings and recommendations, omitting any protected information, shall be prepared whenever possible and released to the public along with a copy of the final FAA order. Only persons admitted by the Office of Dispute Resolution for Acquisition under the protective order and Government personnel shall be provided copies of the unredacted findings and recommendations.

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

### **§ 17.39 Default adjudicative process for contract disputes.**

(a) The Default Adjudicative Process for contract disputes will commence on the latter of:

(1) The parties' submission to the Office of Dispute Resolution for Acquisition of a joint statement pursuant to § 17.27 which indicates that ADR will not be utilized; or

(2) The parties' submission to the Office of Dispute Resolution for Acquisition of notification by any party that the parties have not settled some or all of the dispute issues via ADR, and it is unlikely that they can do so within the time period allotted and/or any reasonable extension.

(b) Within twenty (2) business days of the commencement of the Default Adjudicative Process, the Product Team shall prepare and submit to the Office of Dispute Resolution for Acquisition, with a copy to the contractor, a chronologically arranged and indexed Dispute File, containing all documents which are relevant to the facts and issues in dispute. The contractor will be entitled to supplement such a Dispute File with additional documents.

(c) The Director of the Office of Dispute Resolution for Acquisition shall assign a DRO or a Special Master to conduct fact-finding proceedings and provide findings and recommendations concerning the issues in dispute.

(d) The Director of the Office of Dispute Resolution for Acquisition may delegate authority to the DRO or Special Master to conduct a Status Conference within ten (10) business days of

the commencement of the Default Adjudicative Process, and, may further delegate to the DRO or Special Master the authority to issue such orders or decisions to promote the efficient resolution of the contract dispute.

(e) At any such Status Conference, or as necessary during the Default Adjudicative Process, the DRO or Special Master will:

(1) Determine the appropriate amount of discovery required to resolve the dispute;

(2) Review the need for a protective order, and if one is needed, prepare a protective order pursuant to § 17.9;

(3) Determine whether any issue can be stricken; and

(4) Prepare necessary procedural orders for the proceedings.

(f) At a time or at times determined by the DRO or Special Master, and in advance of the decision of the case, the parties shall make final submissions to the Office of Dispute Resolution for Acquisition and to the DRO or Special Master, which submissions shall include the following:

(1) A joint statement of the issues;

(2) A joint statement of undisputed facts related to each issue;

(3) Separate statements of disputed facts related to each issue, with appropriate citations to documents in the Dispute File, to pages of transcripts of any hearing or deposition, or to any affidavit or exhibit which a party may wish to submit with its statement;

(4) Separate legal analyses in support of the parties' respective positions on disputed issues.

(g) Each party shall serve a copy of its final submission on the other party by means reasonable calculated so that the other party receives such submissions on the same day it is received by the Office of Dispute Resolution for Acquisition.

(h) The DRO or Special Master may decide the contract dispute on the basis of the record and the submissions referenced in this section, or may, in the DRO or Special Master's discretion, allow the parties to make additional presentations in writing. The DRO or Special Master may conduct hearings, and may limit the hearings to the testimony of specific witnesses and/or presentations regarding specific issues.

The DRO or Special Master shall control the nature and conduct of all hearings, including the sequence and extent of any testimony. Hearings on the record shall be conducted by the ODRA:

(1) Where the DRO or Special Master determines that there are complex factual issues in dispute that cannot adequately or efficiently be developed solely by means of written presentations and/or that resolution of the controversy will be dependent on his/her assessment of the credibility of statements provided by individuals with first-hand knowledge of the facts; or

(2) Upon request of any party to the contract dispute, unless the DRO or Special Master finds specifically that a hearing is unnecessary and that no party will be prejudiced by limiting the record in the adjudication to the parties written submissions. All witnesses at any such hearing shall be subject to cross-examination by the opposing party and to questioning by the DRO or Special Master.

(i) The DRO or Special Master shall prepare findings and recommendations within thirty (30) business days from receipt of the final submissions of the parties, unless that time is extended by the Officer of Dispute Resolution for Acquisition for good cause. The findings and recommendations shall contain findings of fact, application of the principles of the AMS and other law or authority applicable to the findings of fact, a recommendation for a final FAA order, and, if appropriate, suggestions for future FAA action.

(j) As a party of the findings and recommendations, the DRO or Special Master shall review the disputed issue or issues in the context of the contract, any applicable law and the AMS. Any finding of fact set forth in the findings and recommendation must be supported by substantial evidence.

(k) The Director of the Office of Dispute Resolution for Acquisition may review the status of any contract dispute in the Default Adjudicative Process with the DRO or Special Master during the pendency of the process.

(l) A DRO or Special Master shall submit findings and recommendations only to the Director of the Office of

Dispute Resolution for Acquisition. The findings and recommendations will be released to the parties and to the public, upon issuance of the final FAA order in the case. Should an Office of Dispute Resolution for Acquisition protective order be issued in connection with the contract dispute, a redacted version of the findings and recommendations omitting any protected information, shall be prepared wherever possible and released to the public along with a copy of the final FAA order. Only persons admitted by the Office of Dispute Resolution for Acquisition under the protective order and Government personal shall be provided copies of the unredacted findings and recommendation.

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

(n) Attorneys fees of a qualified prevailing contractor are allowable to the extent permitted by the EAJA, 5 U.S.C. 504 (a)(1).

[Doc. No. FAA-1998-4379, 64 FR 32936, June 18, 1999; 64 FR 47362, Aug. 31, 1999]

## Subpart F—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 delegee of the Administrator.

### § 17.43 Judicial review.

(a) A protestor or contractor may seek 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 Office of Dispute Resolution for Acquisition 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.