

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).

[Docket No. FAA-1998-4379, 64 FR 32936, June 18, 1999, as amended at 72 FR 68474, Dec. 5, 2007]

**§ 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.