



Federal Aviation Administration
Office Of The Chief Counsel
Office Of Dispute Resolution For Acquisition (ODRA)

Frequently Asked Questions

1. What types of disputes does the ODRA resolve?

The ODRA resolves bid protests and contract disputes arising out of or related to solicitations and contracts issued by the FAA under its Acquisition Management System (AMS), which took effect on April 1, 1996. [14 C.F.R. §17.1](#). Disputes under non-AMS contracts or contracts that predated the AMS are not adjudicated at the ODRA. However, at the request of the parties, the ODRA can provide ADR services in connection with such cases. Similarly, where the parties mutually agree, the ODRA can provide pre-dispute/dispute avoidance ADR services to help them resolve their differences prior to the filing of any formal bid protest or contract dispute. See [Pre-Dispute/Dispute Avoidance ADR](#).

2. What are the applicable procedures?

The procedures applicable to ODRA matters are found in the Code of Federal Regulations at [Title 14, Parts 14 and 17](#). They are also described in the [ODRA Guide](#).

3. How do I communicate with the ODRA? How and where do I file protests and contract disputes?

The ODRA office telephone is **(202) 267-3290** and facsimile is **(202) 267-3720**. Our Office Manager is Ms. Gloria Rosier. The ODRA Website contains further detailed instructions on how you may communicate with the ODRA. See [Communications](#). For filing methods, see [14 C.F.R. §17.7](#) and [Filing Instructions](#). For protests, see [14 C.F.R. §17.15\(b\)](#). For contract disputes, see [14 C.F.R. §17.25\(b\)](#).

4. Can I speak to the ODRA Dispute Resolution Officer (DRO) privately regarding my protest or contract dispute?

Unless the DRO is serving as an ADR neutral in the case, private *ex parte* communications by one party with an ODRA DRO regarding the substance of the case will not be permitted. However, DROs are permitted to respond to questions from parties and members of the general public concerning ODRA procedures. If the DRO is serving as the ADR neutral, the parties are encouraged to discuss the

case individually with the DRO. All such discussions are confidential and are not part of the adjudicative record in the case.

5. Can I ask ODRA DROs for legal advice?

Although, as noted above (in the response to Question 4) they may furnish information about the procedures employed by the ODRA, DROs must function as impartial neutrals and, as such, are not authorized to provide legal advice to interested parties in matters before the ODRA. Individuals or entities seeking legal advice should contact an attorney within their organizations or of their own choosing. DROs serving as neutrals can and frequently do provide the parties with a neutral evaluation of the merits of their cases, however.

6. Do I need an attorney to represent me before the ODRA?

Having an attorney represent a private party is not a requirement for pursuing a case before the ODRA. In fact, the majority of cases brought before the ODRA are prosecuted by private parties on a *pro se* basis, i.e., without an attorney. See [ODRA Statistics](#). The ODRA Website [Guide](#) is intended to provide potential parties with sufficient information about the process. However, private parties should carefully gauge whether they wish to pursue a matter without the assistance of legal counsel. The FAA's Product Teams are represented by counsel in all ODRA matters. In cases where confidential and proprietary information requires the issuance of an ODRA Protective Order, it may be necessary to engage an independent counsel in order to have access to protected materials that are critical to the prosecution of a case. See [Protective Orders](#).

7. If my protest or contract dispute is successful, will I be able to recover my attorneys' fees and costs?

The FAA Administrator has held that the Equal Access to Justice Act (EAJA) is applicable to the ODRA's adjudicative proceedings, and qualifying applicants are compensated for some of their fees and costs, when the circumstances satisfy the prerequisites for EAJA recovery. See [EAJA Application of IBEX Group, Inc., 96-ODRA-00037EAJA](#). The rules implementing EAJA are set forth in [14 C.F.R. Part 14](#). However, parties may not recover attorneys' fees and costs other than what might be obtained under the EAJA. See [Protest of Haworth, Incorporated, 98-ODRA-00075](#).

8. When must I file a protest? See

[Protests, Filing Deadlines.](#)

9. What information must I furnish in a protest? See

[Protests, Content of Protests.](#)

10. When must I file a contract dispute? See

[Contract Disputes, Filing Limitations.](#)

11. What information must I furnish in a contract dispute? See [Contract](#)

[Disputes, Content of Contract Disputes..](#)

12. How do I transmit a protest, contract dispute or other item to the ODRA? How can I make sure such items are received by filing deadlines?

See [Filing Instructions](#).

13. What if my filing arrives at the ODRA after normal business hours, i.e., after 5 p.m. Eastern Time?

It will be considered as having been filed on the following business day. If due prior to 5 p.m. Eastern Time, a filing will be considered as untimely. See [14 C.F.R. §17.7\(a\)](#).

14. In terms of filing deadlines, what is the impact of weekends, federal holidays and weather emergencies that result in a Government shutdown?

Such days are excluded when calculating filing deadlines. See [14 C.F.R. §17.7\(c\)](#).

15. Can a verifiable personal emergency extend a filing deadline?

The ODRA may extend filing deadlines for cause, except in the case of initial protest or contract dispute filings. See 14 C.F.R. [§§17.13\(c\)](#); [17.37\(m\)](#); [17.39\(m\)](#).

16. How long does it take to complete a case?

The ODRA resolves cases expeditiously. Statistics regarding the numbers of days taken to resolve ODRA cases are maintained and can be found in this Website at [ODRA Statistics](#).

17. Are ADR services provided by the ODRA?

Yes. The ODRA uses alternative dispute resolution (ADR) techniques as its primary means of resolving bid protests and contract disputes, and parties are offered a variety of ADR options. See [Alternative Dispute Resolution](#).

18. What are the various available ADR methods?

All common forms of ADR are available at the ODRA. The form used in a particular case depends on what parties agree to as part of their ADR Agreement. [See Alternative Dispute Resolution, Available ADR Methods](#).

19. What methods of ADR have been employed by the ODRA?

In most cases, the ODRA has helped parties to settle bid protests and contract disputes through neutral evaluation and mediation techniques. On occasion, arbitration has been used to resolve a matter.

20. Who decides whether to use ADR?

The decision on whether ADR will be used is strictly that of the parties, and the ADR process is entirely voluntary. The ODRA Procedural Rules require, however, that parties consider ADR in every case and provide written explanations if ADR will not be utilized. See 14 C.F.R. [§§17.17\(c\)](#) and [17.27\(b\)](#).

21. Who may be used as an ADR neutral on an ODRA case and who chooses the neutral?

The parties select the neutral in all cases. Parties have a choice between an ODRA Dispute Resolution Officer (DRO), a GSBICA Judge, or a private compensated neutral. In most cases, the parties have chosen to utilize the services of an ODRA DRO. See [Alternative Dispute Resolution, Selection of a Neutral](#).

22. Why should I agree to use ADR?

ADR is faster and is far less expensive than litigation and has been used to settle most of the disputes brought to the ODRA. Further, through ADR, the parties themselves retain control over the outcome of their dispute and can frequently structure the ultimate resolution in a way that produces a “win-win” solution for all concerned. Thus, unlike litigation, ADR will often help parties maintain cordial business relations with one another.

23. Has ADR been effective in resolving disputes?

Yes. The success rate for ADR at the ODRA has been high. See [ODRA Statistics](#). During Fiscal Year 1999, the ODRA was able successfully to resolve 53% of its protests and 95% of its contract disputes by means of ADR. Furthermore, even when a case is not completely settled by means of ADR, the ODRA has employed ADR techniques successfully to resolve portions of parties’ disputes, narrow issues, and develop agreements (stipulations) regarding underlying facts.

24. Where can I find a sample ADR Agreement? a sample ADR settlement agreement?

Model forms are available in downloadable form in the ODRA Guide. See [ODRA Model Forms](#).

25. Can I change my mind about using ADR after I have signed an ADR agreement?

Yes. ADR is completely voluntary and may be terminated by either party at any time. The mediator may also be permitted to terminate ADR pursuant to the provisions of the parties’ ADR Agreement, when resolution of the protest or dispute through ADR appears unlikely.

26. How is the ODRA’s impartiality maintained?

The ODRA is charged with maintaining fairness and impartiality on behalf of the Administrator. It is physically and organizationally independent of the agency’s

procurement counsel; and does not discuss pending cases with agency procurement counsel, unless the opposing party is present. (Note: The prohibition against such discussions does not apply to the ADR process, where ODRA neutrals will engage in *ex parte* discussions with individual parties in order to facilitate settlement.)

27. How do I get information that is necessary to prove my allegations?

Discovery – the exchange of information and documents -- is an integral part of the ODRA dispute resolution process. However, the discovery must be focused on obtaining information relevant to the issues to be resolved. The parties are encouraged to develop voluntary discovery plans and agreements, and an ODRA ADR neutral can be made available to assist the parties to negotiate the terms of discovery. If the parties cannot agree on a plan, the adjudicating DRO or Special Master has the discretion to order an appropriate amount of discovery. See [Protests, Discovery](#) and [Contract Disputes, Discovery](#).

28. Can contract awardees participate in a protest?

Yes. The FAA Contracting Officer (CO) involved is required to provide notice of a protest to interested parties (including the awardee) within 24 hours of its being filed with the ODRA and served on the CO. The ODRA Procedural Rules permit awardees to intervene as interested parties in an ODRA protest as a matter of right, provided they advise the ODRA of their desire to do so within two (2) business days of the CO's notification to them of the protest. For post-award protests, the awardee is the only interested party permitted to participate as an intervenor. See [14 C.F.R. §17.15\(f\)](#) and [\(g\)](#).

29. Will my proprietary and competition-sensitive information be protected?

Yes. The ODRA can issue a Protective Order at the request of a party, or upon its own initiative, to protect the release of information, which could result in a competitive advantage to one or more firms. After a Protective Order is issued, only a party's counsel, or consultants retained by counsel, may be allowed access to the protected information. Access to protected information is granted only if such individuals can establish they are not involved in competitive decisionmaking for any firm that could gain a competitive advantage from access to the protected information. See [14 C.F.R. §17.9; Protective Orders](#).

30. Can there be a suspension of award or of contract performance during the pendency of a bid protest?

Contract award and performance will continue during pendency of a protest unless there are compelling reasons for suspension. See [14 C.F.R. 17.15\(d\)](#). This policy is consistent with Congressional intent that the automatic procurement stay provision of the Competition in Contracting Act (CICA) not apply to bid protests under the AMS. See [Public Law 104-50, Section 348](#); and [Protests, Content of Protests](#).

31. Do I have to provide copies of protests and contract disputes filed with the ODRA to the other party? What about copies of other filings?

Yes. Copies of a protest must be served on the FAA Contracting Officer and any other official designated in the SIR for receipt of protests by means reasonably calculated to be received by the Contracting Officer on the same day as it is to be received by the ODRA. See [14 C.F.R. §17.15\(e\)](#). Copies of contract disputes similarly must be provided to the other party (*i.e.*, to the FAA Contracting Officer, if the contract dispute is filed by the contractor, or to the contractor, if the contract dispute is filed by the FAA Product Team). [14 C.F.R. §17.25\(d\)](#). Copies of all other filings related to protests or contract disputes must also be provided to the other parties or to their counsel. See, *e.g.*, [14 C.F.R. §17.39\(g\)](#).

32. Can documents generated in ADR proceedings be used in adjudication?

Yes, but only to the extent the parties agree to their use either as part of the ADR Agreement or otherwise. Documents that are not generated as part of the ADR proceedings and that can be obtained by means of discovery are not barred from use in adjudication, even if used in conjunction with those ADR proceedings.

33. What kind of relief can I get from the ODRA's Default Adjudicative Process?

The ODRA has broad discretion to recommend remedies for successful protests and contract disputes that are consistent with the AMS and applicable statutes. See [14 C.F.R. §17.21](#) and [§17.23\(f\)](#).

34. When are hearings conducted for bid protests?

Hearings are conducted upon request or if the DRO (or Special Master) believes a hearing is necessary, unless the matter is resolved in a summary proceeding or the DRO concludes that the lack of a hearing would not prejudice either party. See [Protests, Hearings](#).

35. When are hearings conducted for contract disputes?

As with protests, hearings are conducted in matters involving contract disputes, either upon a party's request or at the option of the DRO (or Special Master), unless the matter is resolved in a summary proceeding or the DRO concludes that the lack of a hearing would not prejudice either party. For contract disputes, because they frequently involve complex technical matters or matters which require the assessment of credibility, hearings are the norm. See [Contract Disputes, Hearings](#).

36. Who makes the final decision in an ODRA adjudication?

The final decision of the FAA is made by Order of the FAA Administrator or her delegee, based on review of the ODRA's findings and recommendations at the conclusion of the case. See [14 C.F.R. §17.41](#). By Memorandum of the Administrator dated March 27, 2000, the ODRA Director has been delegated authority to execute for the FAA on behalf of the Administrator, orders and final

decisions for the FAA in all matters within the ODRA's jurisdiction, provided that such matters involve either: (1) a bid protest concerning an acquisition having a value or potential value of not more than one million dollars (\$1,000,000.00); or (2) a contract dispute involving a total amount in dispute, exclusive of interest, legal fees or costs, of not more than one million dollars (\$1,000,000.00). The delegation further authorizes the ODRA Director to execute and issue orders and final decisions on behalf of the Administrator for any applications made pursuant to the Equal Access to Justice Act (EAJA) for matters within the ODRA's jurisdiction. With regard to all ODRA cases, regardless of amount, the Administrator, by Memorandum dated July 29, 1998, delegated authority to the ODRA Director to issue rulings and other orders (short of the final agency Order) that he considers necessary for the efficient prosecution of ODRA cases. The Director's authority in this regard is also set forth in the ODRA Procedural Rules. See [Delegations](#) and 14 C.F.R. §§17.5, [17.9](#), [17.19](#), [17.29](#), [17.37\(c\)](#), [17.39\(d\)](#) and [17.39\(e\)](#).

37. What is contained in the ODRA's findings and recommendations?

Findings and recommendations contain findings of fact, legal analysis of the principles of the AMS or other applicable law or authority, a recommendation for a final FAA order, and if appropriate, suggestions for future FAA actions. See [14 C.F.R. §17.37\(i\)](#) and [§17.39\(i\)](#).

38. How can I find a previously decided ODRA case?

All ODRA case decisions under the Default Adjudicative Process are published on the ODRA Website. They are summarized in [Case Summaries](#) (Parts I and II). You can find a case if you know the name of the protester or contractor by going to the [Case By Name of Complainant](#) page. That page has links to individual case summaries within the Case Summaries pages, and from those links, you can get the ODRA Findings and Recommendations and the Administrator's Order for the case in question. If you don't know the name, you can get to a case, by accessing the [Case Topics](#) index and searching cases by issue. Also, you can do a word search using the [FAA Search Engine](#) . See [ODRA Search](#).

39. How do I appeal an Administrator's Order?

Administrator's final Orders in ODRA cases can be appealed to the U.S. Court of Appeals for the District of Columbia Circuit, or to the U.S. Court of Appeals where the private party's business is located. See [14 C.F.R. §17.43](#).