

The ODRA procedural regulations require that before deciding or recommending a decision on a dispositive motion, the ODRA give an opportunity to respond to the party affected. 14 C.F.R. § 17.31(f) (2014). On December 16, 2014, the ODRA conducted a scheduling conference to schedule briefings on the Motion. *ODRA Conference Memorandum*, dated December 16, 2014. NBI filed its Response to the Motion on January 12, 2015 and the Service Area filed its Reply on January 26, 2015.¹ For the reasons stated below, the ODRA recommends that the Service Area's first Motion be granted and the Dispute be dismissed for lack of jurisdiction.

II. Discussion

The ODRA procedural rules provide that the ODRA, by request of any party or on its own initiative, may dismiss an entire contract dispute if it was, among other things, filed by a subcontractor or other person or entity lacking standing. 14 C.F.R. § 17.31(a)(2), (d)(3) (2014). The ODRA procedural rules further expressly provide that, "Subcontractors not in privity with the FAA are not interested parties in the context of a contract dispute." 14 C.F.R. § 17.5(m) (2014). Case law confirms that the ODRA is without jurisdiction to adjudicate a contract dispute filed by a subcontractor because they lack privity of contract with the FAA. *Protest of Edward B. Block*, 02-ODRA-00225; *accord, Eagle Peak Rock & Paving, Inc. v. Department of the Interior*, CBCA 2770, 2012-2 B.C.A. ¶35,146.

The undisputed record shows that NBI had no direct contractual relationship with the FAA. *Dispute* at 1 ¶¶ 2-3, 2 ¶¶ 5, 8; *Reply* at 1 ¶1. The undisputed record also shows that Parsons entered into a subcontract with NBI, assigning it the number GL-08-11448. *Dispute* at 1 - 2, ¶¶ 3-4. In addition, NBI's own exhibits expressly identify their contract as a "subcontract,"² and the nature of NBI's relationship with Parsons is described as that of a prime and subcontractor. *Dispute Exhibits A and B*. For these reasons, the ODRA

¹ On January 26, 2015, the Service Area filed a second Motion to dismiss the contract dispute for untimeliness. In light of this decision, however, it is not necessary for the ODRA to consider the Service Area's second Motion.

² The title of the document is "Subcontract GL-08-11448 Midway Fire Life Safety." *Dispute Exhibits A*.

finds that NBI is a subcontractor who lacks privity with the FAA. NBI, therefore, is not an interested party with standing to file a contract dispute.³ 14 C.F.R. § 17.31(a), (d)(3) (2014).

III. Conclusion

The ODRA recommends that the Service Area's Motion be granted and this matter be summarily dismissed with prejudice.⁴

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Dispute Resolution Officer and Administrative Judge
Office of Dispute Resolution for Acquisition

³ The ODRA notes that NBI also asserts that it has "not filed a lawsuit," but rather seeks ADR services. *Response* at 1 and 4 (*citing* 14 C.F.R. § 17.35(a) (2014)). Informal ADR related services are available to address acquisition related disputes that otherwise would not be subject to formal adjudication under the AMS and the ODRA Procedural Rules. 14 C.F.R. Part 17, Subpart G (2014). In fact, Subpart G of the ODRA Procedural Rules specifically provides for a non-binding Pre-disputes process which is available for *all* disputes that arise under contracts with the FAA, including those not subject to the ODRA's jurisdiction under the AMS, provided that all parties voluntarily agree to participate. 14 C.F.R. § 17.57(a) and (c) (2014).

⁴ Nothing in this decision in any way affects the rights of NBI to pursue legal action against Parsons in an appropriate forum.