

Office of Dispute Resolution for Acquisition
Federal Aviation Administration
Washington, D.C.

In re:)
)
ACCELERATED PROCEDURES FOR) STANDING ORDER 2014-4
PROTESTS AND DISPUTES WITHIN)
FINAL ORDER DELEGATION LIMITS)

The Office of Dispute Resolution for Acquisition (“ODRA”), *sua sponte*, issues this Standing Order concerning optional accelerated procedures that may be employed in certain contract disputes and protests (collectively, “covered matters”) filed before the ODRA.

IT IS ORDERED that the following requirements shall apply, at the discretion of the ODRA Director or presiding Dispute Resolution Officer/Administrative Judge (“Administrative Judge”), in all covered matters under 14 C.F.R. Part 17:

I. INTRODUCTION

A. Purpose and Authority

Consistent with 14 C.F.R. § 17.55 and 49 U.S.C. § 46102(a), this Standing Order is adopted to ensure that covered matters filed at the ODRA are conducted in a manner conducive to justice and the proper dispatch of business. Moreover, the procedures in this Standing Order enhance the FAA’s “internal process for resolving protests and disputes in a timely, cost-effective and flexible manner,” thereby implementing a fundamental principle of the Federal Aviation Administration’s (“FAA”) Acquisition Management System (“AMS”). *AMS Policy 3.1.3* (January 2013). Finally, this Standing Order relies on the authority of the ODRA Director and the presiding Administrative Judge to alter the scheduling of adjudication events, and to require additional submissions in both protests and contract disputes. 14 C.F.R. §§ 17.21(c) and (f) (protests), and 17.33 (f) – (h) (contract disputes) (2014).

B. Covered Matters

This Standing Order applies to the following covered matters:

1. Covered Protests

Covered protests are protests under 14 C.F.R. pt. 17, subpart B, that:

- a. concern an acquisition having a potential dollar value, including any option years, of not more than twenty million dollars (\$20,000,000.00);
- b. concern an acquisition using (i) Single Source Selection Procedures or (ii) Commercial and Simplified Purchase Methods;
- c. either fail to support a suspension request (*see* 14 C.F.R. § 17.15(d)(3)) or do not include a request for suspension;
- d. involve few or no material issues of fact; and
- e. involve a limited number of legal issues, none of which are novel, complex, or matters of first impression.

2. Covered Contract Disputes

Covered contract disputes are contract disputes under 14. C.F.R. pt 17, subpart C, which involve:

- a. a total amount to be adjudicated, exclusive of interest, legal fees or costs, of not more than ten million dollars (\$10,000,000.00);
- b. few or no material issues of fact; and
- c. a limited number of legal issues, none of which are novel, complex, or matters of first impression.

C. Relationship to Other Authority

This Standing Order supplements, but does not supplant or supersede, 49 U.S.C. § 40110(d), 49 U.S.C. § 46110, and the ODRA Procedural Regulation, 14 C.F.R. pt. 17. The procedures set forth in this Standing Order may be invoked at the discretion of the Director of the ODRA or the assigned Administrative Judge, consistent with 14 C.F.R. §§ 17.21(f) (protests) and 17.33(f) (contract disputes) (2014). This Standing Order may be revised from time to time, if needed, and may be revised and modified by orders entered in specific proceedings/cases.

II. ACCELERATED PROCEDURES FOR COVERED PROTESTS

A. Initial Showing

The ODRA Procedural Regulation requires protests to include a “detailed statement of both the legal and factual grounds of the protest, and one (1) copy of each relevant document.” 14 C.F.R. § 17.15(c)(7) (2014). If the ODRA determines that a protest is a covered protest, then it may invoke at its discretion the procedures of this Standing Order, on its own initiative, or at the request of a party. Invoking the procedures in this Standing Order generally will occur in conjunction with the Initial Status Conference under 14 C.F.R. § 17.17(b) (2014), but also may occur later in the adjudication process, as necessary.

B. Accelerating the Schedule

Depending on the needs of the protest, the ODRA Director or the presiding Administrative Judge may shorten the deadlines for the Agency Response and the Comments from the Protester and any Intervenor. The ODRA Director or the presiding Administrative Judge may also shorten the timeline for alternative dispute resolution (“ADR”) processes, and may order that any voluntary ADR proceedings run concurrently with the adjudication.

C. Summary Findings and Recommendations

Summary Findings and Recommendations curtail the level of detail contained in the findings of fact as compared to the findings of fact in the typical ODRA findings and recommendations. In this regard, findings of fact in Summary Findings and Recommendations contain merely a brief description of the undisputed factual background, and detailed factual findings are used only for factual issues that the parties jointly agree to be material issues of fact *in dispute*. The purpose of Summary Findings and Recommendations is to reduce the cost and time required for briefings by the parties, and drafting of the ODRA’s decision, while still complying with the standards of 5 U.S.C. § 557(c).

1. Request. The parties may jointly request that the ODRA issue Summary Findings and Recommendations. The request must be supported with a document that lists the questions of material fact in dispute that require factual findings by the ODRA. The request must be made prior to the filing of the Agency Response to ensure that the Agency has the full opportunity to state and support its position regarding the material issues of fact in dispute.
2. Discretion. Upon receiving a joint request of the parties that includes a joint stipulation identifying the disputed issues of material fact, the ODRA will entertain requests to issue summary findings and recommendations. The ODRA retains full discretion to deny a request for Summary Findings and Recommendations. Reasons to deny the request include, but are not limited to:

failure to identify all material facts in dispute, stipulations of immaterial factual issues, unsupportable stipulations regarding legal questions or mixed questions of law and fact, novel issues or matters of first impression, and the public interest in transparency of transactions using the AMS.

III. ACCELERATED PROCEDURES FOR COVERED CONTRACT DISPUTES

A. Initial Showing

The ODRA Procedural Regulation requires contract disputes to include a “detailed chronological statement of facts and of the legal grounds underlying the contract dispute,” supported by several other types of information. 14 C.F.R. § 17.27(a) (2014). If the ODRA determines that a contract dispute is a covered contract dispute, then it may invoke the procedures of this Standing Order, on its own initiative, or at the request of a party. Invoking the procedures in this Standing Order generally will occur at the conclusion of the informal resolution period described in 14 C.F.R. § 17.29 (2014), but also may occur later in the adjudication process, as necessary.

B. Accelerating the Schedule

Depending on the needs of the contract dispute, the presiding Administrative Judge may shorten the deadlines for the submissions to the ODRA or between the parties, e.g., deadlines for discovery responses, final submissions, etc. The presiding Administrative Judge may also shorten the timeline for ADR processes, and may order that any voluntary ADR proceedings run concurrently with the adjudication.

C. Summary Findings and Recommendations

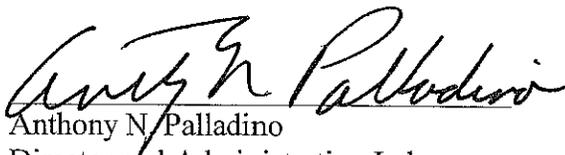
Summary Findings and Recommendations curtail the level of detail contained in the findings of fact as compared to the findings of fact in the typical ODRA findings and recommendations. In this regard, findings of fact in Summary Findings and Recommendations contain merely a brief description of the undisputed factual background, and detailed factual findings are used only for factual issues that the parties jointly agree to be material issues of fact *in dispute*. The purpose of Summary Findings and Recommendations is to reduce the cost and time required for briefing by the parties, and drafting of the ODRA’s decision, while still complying with the standards of 5 U.S.C. § 557(c).

1. Request. The parties may jointly request that the ODRA issue Summary Findings and Recommendations. The request must be supported with a document that lists the questions of material fact in dispute that require factual findings by the ODRA. The request must be made prior to the filing of the Final Submissions to ensure that both parties have the full opportunity to state and support its position regarding the material issues of fact in dispute.

2. Discretion. Upon receiving a joint request of the parties that includes a joint stipulation identifying the disputed issues of material fact, the ODRA will entertain requests to issue Summary Findings and Recommendations. The ODRA retains full discretion to deny a request for Summary Findings and Recommendations. Reasons to deny the request include, but are not limited to: failure to identify all material facts in dispute, stipulations of immaterial factual issues, unsupportable stipulations regarding legal questions or mixed questions of law and fact, novel issues or matters of first impression, and the public interest in transparency of transactions using the AMS.

This Order shall become effective on the date executed below.

Dated this 11th day of August, 2014.



Anthony N. Palladino
Director and Administrative Judge
FAA Office of Dispute Resolution
for Acquisition