

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

In re:)
)
ADR NEUTRALS FROM THE CIVILIAN) STANDING ORDER 2024-6
BOARD OF CONTRACT APPEALS)
)

The Office of Dispute Resolution for Acquisition (“ODRA”), *sua sponte*, issues this Standing Order to provide procedures for parties that request a neutral for alternative dispute resolution (“ADR”) proceedings under a memorandum of understanding between the ODRA and the Civilian Board of Contract Appeals (“CBCA”).

I. INTRODUCTION

A. Purpose and Authority

Consistent with 49 U.S.C. § 40110(d)(1)(B); 14 C.F.R §§ 17.35(a), 17.37(a); and Acquisition Management Policy 3.9.2, this Standing Order facilitates using consensual ADR techniques to the maximum extent practicable. The ODRA issues it under 14 C.F.R. § 17.55, which authorizes the ODRA Director to issue Standing orders as needed for the orderly conduct of business before the ODRA.

B. Definitions

Refer to 14 C.F.R. § 17.3, which defines *dispute resolution officer* (“DRO”), *alternative dispute resolution* (“ADR”), and *neutral*. The term *memorandum of understanding* (“MOU”) refers to the agreement between the ODRA and the CBCA found in Attachment 1 to this Standing Order.

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. part 17. This Standing Order may be revised from time to time, if needed.

II. PURPOSE OF THE MEMORANDUM OF UNDERSTANDING AND FUNDING

The MOU provides the ODRA with surge capacity to address high case volume relative to the availability of ODRA DROs. CBCA neutrals are available on a cost-reimbursable basis using funds from the Product Team whose solicitation or contract gave rise to the protest or contract dispute at issue. The Product Team may seek reimbursement for a portion of such billings from other interested parties, pursuant to the terms of an ADR agreement. *See* 5 U.S.C. § 573(d).

III. PROCEDURES FOR OBTAINING CBCA NEUTRALS

The following procedures apply when parties seek to use a CBCA neutral in ODRA matters:

A. Negotiate an ADR agreement that requests a CBCA neutral and addresses funding.

The parties must negotiate and execute an ADR agreement that addresses the procedures, and includes for the purpose of this Standing Order:

- An acknowledgment that the Product Team is responsible for funding the use of the CBCA. MOU at 3, § 5; 14 C.F.R. § 17.37(d)(2).
- Cost sharing terms if the parties plan to share the cost. MOU at 3, § 5; 14 C.F.R. § 17.37(d)(2); 5 U.S.C. § 573(d).
- A provision asking the ODRA Director to request a neutral from the CBCA. *See* MOU at 2, § 2.B. This request is included in lieu of stating the neutral's name, as is ordinarily required under 17 C.F.R. § 17.37(d)(2).

B. File a request and estimate with the ODRA.

To use a neutral from the CBCA under the MOU, parties must file with the ODRA:

- Their signed ADR agreement. *See* 17 C.F.R. § 17.37(d). Note that the ADR Agreement must be served on intervenors, and ADR agreements are not confidential. *See* 5 U.S.C. § 571(5).
- A request to use a CBCA neutral, if not already contained in the ADR agreement. This will not be part of the case record and is not required to be served on other parties.
- A not-to-exceed level-of-effort estimate. The estimate does not need to be served on intervenors. At this stage of the process, the parties, not the ODRA nor the CBCA, are in the best position to generate the estimate of the level of effort based on their knowledge of the complexity of the matter. The estimates should reasonably anticipate the effort required. For example, for a typical mediation, the estimate should include time for:
 - The neutral to review the record;
 - Time for the neutral to engage in preliminary meetings with each party prior to joint proceedings;

- Time for joint and caucus sessions commensurate with the complexity of the issues and party positions;
- Time to negotiate a settlement agreement; and,
- Time for CBCA support staff to assist the neutral.

The estimate should also include any travel estimates and related costs, but the ODRA encourages using virtual meeting software to reduce travel expenses. (Note: A level-of-effort estimate may be consolidated into a cost estimate if hourly rates have been obtained from the AGC Budget Director. *See infra* at § III.C.).

C. Financial Agreement and Administration

AGC-10 will execute (or has already executed) an overarching FAA ADR General Terms & Conditions (“GT&C”) (FS-7600A) with CBCA. To provide the reimbursement of services from the CBCA under the MOU, the FAA Product Team must:

- Coordinate with the AGC Budget Director to generate a cost estimate based on the information provided in § III.B., *supra*. The cost estimate will reimburse the CBCA for all direct costs and reasonable overhead costs allocable to the services rendered by the CBCA in connection with the matters assigned.
- Validate the cost of each assigned matter for which services are provided by the CBCA. Costs will be tracked separately by ODRA docket number.
- Coordinate the obligation of funds on all Delphi Orders (FS-7600B) with the AGC Budget Director, or designated AGC Budget team member. This will ensure the financial administration and tracking of all ADR proceedings supporting FAA ODRA.
- Monitor billing for reimbursement. Billing will be made on a quarterly basis no later than 45 days after the end of the quarter to which the bill applies. The GSA Office of Finance, Accounting Control Branch will submit such bills to the FAA.

This Standing Order becomes effective on the date executed below.

John A. Dietrich
Director and Chief Administrative Judge

Effective Date: July 8, 2014.

**INTERAGENCY MEMORANDUM OF UNDERSTANDING
BETWEEN
GENERAL SERVICES ADMINISTRATION
AND
FEDERAL AVIATION ADMINISTRATION**

1. Purpose.

This interagency Memorandum of Understanding (MOU) between the United States General Services Administration (GSA) and the Federal Aviation Administration (FAA), a modal agency of the United States Department of Transportation, establishes the basis for services to be provided to the FAA Office of Dispute Resolution for Acquisition (ODRA) by the Civilian Board of Contract Appeals (CBCA). This MOU supersedes the interagency agreement between the parties dated October 12, 2007.

2. Scope of Work.

The CBCA, upon the request of the ODRA's Director, will make available CBCA Board Judges to act as Special Masters to provide findings of fact and recommendations in administrative adjudications, and as Neutrals in Alternative Dispute Resolution (ADR) proceedings concerning protests and contract disputes, under the ODRA's Dispute Resolution Process.

The CBCA will provide the personnel, resources, hearing rooms, and incidental equipment and supplies needed to perform the services specified below.

2.A Adjudicative Process for Protests and Contract Disputes.

The CBCA will make available Board Judges to serve as Special Masters for the adjudication of protests and contract disputes in accordance with 14 CFR Part 17. This regulation contemplates the use of Special Masters to conduct fact-finding proceedings and to provide findings and recommendations concerning some or all of the matters in dispute.

Upon receipt of a request from the ODRA Director, the CBCA Chair will select a CBCA Judge to serve as a Special Master in the referred matter, subject to the concurrence of the ODRA Director. In making findings and recommendations, the Special Master will follow the procedures set forth in 14 CFR Part 17, and will apply the principles of the Acquisition Management System (AMS) as well as other applicable law or authority, including precedents established by prior FAA Administrator Orders and ODRA Findings and Recommendations.

The Special Master will submit to the ODRA Director his or her findings and recommendations in the referred matter within 30 business days after the record closes. Findings and recommendations shall contain: (1) findings of fact; (2) application of the principles of the AMS, and any applicable law or authority to the findings of fact; and (3) a recommendation for a final FAA order. The ODRA Director may review the status of any pending matter with the CBCA Chair or the Special Master on an as-needed basis. The time frames set forth herein may be extended at the discretion of the ODRA Director upon the request of the Special Master.

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The Special Master shall submit findings and recommendations only to the ODRA Director pursuant to 14 CFR §§17.21(o) and 17.33(o). The ODRA Director will review the findings and recommendations to ensure that they are consistent with AMS principles and applicable law. The findings and recommendations will be released to the parties and the public (subject to any protective order) only upon issuance of a final Order in the matter by the FAA Administrator.

2.B Alternative Dispute Resolution (ADR) Process.

The CBCA will make available Board Judges to serve as Neutrals in ADR proceedings involving protests or contract disputes, in accordance with 14 CFR Part 17, Subpart D, Alternative Dispute Resolution.

Upon receipt of a request from the ODRA Director, based on the terms of the ADR agreement executed by the parties to the referred matter, the CBCA Chair will select one or more Judges to serve as Neutral or Neutrals, subject to the concurrence of the ODRA Director.

The Neutral or Neutrals will consider the use of any ADR technique proposed by the parties that is deemed to be fair, reasonable, and in the best interest of the parties.

3. Period of Performance.

The initial period of performance of this MOU shall be from the date hereof through September 30, 2026. This period shall be extended through the conclusion of each succeeding fiscal year.

4. Reimbursement for Services.

The FAA will reimburse the CBCA for all direct costs and reasonable overhead costs allocable to the services rendered by the CBCA in connection with the matters assigned pursuant to this MOU. Billing for reimbursement for these costs will be made on a quarterly basis no later than 45 days after the end of the quarter to which the bill applies. The GSA Office of Finance, Accounting Control Branch will submit such bills to the FAA. Payment for arbitration services will be processed through the Intragovernmental Payment and Collection (IPAC) system. The payable Agreement number, the Agency Location Code (ALC), Treasury Account Symbol (TAS), and associated dollar amounts must be referenced on all IPAC transactions. Payment is due within 30 days of receipt of the bill by the FAA.

The cost elements of each assigned matter for which services are provided by the CBCA will be kept separately by ODRA docket number.

The executed Agreement shall be attached to an appropriate funding document (FMS Forms 7600A and 7600B) and together the Agreement and funding document will form the basis of the Agreement between the FAA and CBCA.

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5. Financial Administration.

Copies of billings for services shall be transmitted by the CBCA to: (1) the FAA office designated by ODRA for the specific case; (2) the ODRA Director; and (3) the FAA Office of Financial Management, General Accounting Branch (AFM-210).

Payment shall be the responsibility of the Product Team whose solicitation or contract gave rise to the protest or contract dispute. The Product Team may seek reimbursement for a portion of such billings from other interested parties, pursuant to the terms of an ADR agreement. All billing information, including applicable accounting and appropriation data, shall be provided for each matter by the FAA.

6. FAA Technical Officer Authority.

The ODRA Director is responsible for the technical administration of this MOU and liaison with the CBCA and the CBCA Judges who serve as Special Masters or Neutrals.

7. Communications.

Communications regarding this matter should be addressed to the following.

FAA:

- a. By mail:
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591
Attention: Director, AGC-70, Wilbur Wright Building – Suite 2W100
- b. By hand delivery (FedEx, courier, etc.):
Federal Aviation Administration
600 Independence Avenue, SW
Wilbur Wright Building – Suite 2W100
Washington, D.C. 20591
Attention: Director, AGC-70
- c. By email:
[REDACTED](or other applicable email for successors to the Director).

CBCA:

- a. Chair, Civilian Board of Contract Appeals
General Services Administration
6th Floor
1800 M Street, N.W.
Washington, DC 20036

MEMORANDUM OF UNDERSTANDING – GSA/FAA

(202) 606-8800

- b. Chief Counsel, Civilian Board of Contract Appeals
General Services Administration
6th Floor
1800 M Street, N.W.
Washington, DC 20036
(202) 606-8800
[REDACTED]

c. **Protection of Information.**

The CBCA will take appropriate measures to protect proprietary, privileged, or otherwise confidential information that may come into its possession as a result of this MOU, regardless of whether a protective order has been issued by the ODRA.

9. Changes, Interpretations, or Modifications.

Changes and modifications to this MOU shall be in writing and signed by the undersigned, their successors, or their designees. No oral statement by any person shall be interpreted as modifying this MOU.

10. Authority.

The legal authority for this action is the Department of Transportation Act, 49 U.S.C. § 322 (c)(1); the Economy Act, 31 U.S.C. § 1535; the Administrative Dispute Resolution Act of 1996, 5 U.S.C. § 573(d); the ODRA Procedural Rule, Title 14 CFR Part 17; and the delegation of authority to the Chair, Civilian Board of Contract Appeals, by the Administrator of General Services.

11. Termination.

This MOU may be terminated in whole or in part by the mutual consent of the parties at any time, or unilaterally by an individual party, provided a 60-day notice is given to the other party by the withdrawing party. When the FAA is the terminating party, the termination shall be signed by the ODRA Director. In the event of termination, however, terms of this MOU shall continue to apply until the conclusion of all ongoing proceedings.

FEDERAL AVIATION
ADMINISTRATION

GENERAL SERVICES
ADMINISTRATION

JOHN A DIETRICH Digitally signed by JOHN A DIETRICH
Date: 2022.01.14 09:57:55 -05'00'



MEMORANDUM OF UNDERSTANDING – GSA/FAA

By: John A. Dietrich
Director and Chief Administrative Judge
Office of Adjudication
Federal Aviation Administration

By: Erica S. Beardsley
Chair
Civilian Board of Contract Appeals
General Services Administration

Date: _____

Date: 011322 _____