



[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA-2011-1243]

Designation of Administrative Judges and Delegation of Authority

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) gives notice that the FAA Administrator has: designated the Director and Dispute Resolution Officers of the Office of Dispute Resolution for Acquisition (ODRA) as Administrative Judges for all matters within the ODRA's jurisdiction; and delegated authority to the ODRA that supersedes and replaces previous delegations of authority. The FAA is publishing the text of the Designation and Delegation, executed on October 12, 2011, so that it is available to interested parties.

FOR FURTHER INFORMATION CONTACT: Marie A. Collins, Dispute Resolution Officer and Administrative Judge for the Office of Dispute Resolution for Acquisition (AGC-70), Federal Aviation Administration, 800 Independence Street, SW., Room 323, Washington, DC 20591; telephone (202) 267-3290; facsimile (202) 267-3720.

SUPPLEMENTARY INFORMATION:

Background

In 1995 Congress, through the Department of Transportation Appropriations Act, directed the FAA "to develop and implement, not later than April 1, 1996, an acquisition management system that addressed the unique needs of the agency and, at a minimum,

provided for more timely and cost effective acquisitions of equipment and materials."¹ In response, the FAA developed the Acquisition Management System (AMS), a system of policy guidance for the management of FAA procurement, and as a part of the AMS, created the Office of Dispute Resolution for Acquisition (ODRA) to facilitate the Administrator's review of procurement protests and contract disputes.² Subsequently, the FAA promulgated rules of procedure governing the ODRA's dispute resolution process by publishing a final rule entitled, Procedures for Protests and Contract Disputes; Amendment of Equal Access to Justice Act Regulations (effective June 28, 1999).³ In addition to the rules of procedures, ODRA operates pursuant to a series of delegations of authority from the Administrator. Over time, the authority delegated to the ODRA by the Administrator expanded to include the authority of the ODRA Director, among other things, "to execute and issue, on behalf of the Administrator, Orders and Final Decisions for the Administrator in all matters" under the ODRA's jurisdiction valued at not more than \$10 Million.⁴ Congress provided further confirmation as to the FAA's dispute resolution authority in the Vision 100-Century of Aviation Reauthorization Act of 2003 (2003 Reauthorization Act), which expressly provided the ODRA with exclusive jurisdiction over bid protests and contract disputes under the AMS.⁵ Specifically, the 2003 Reauthorization Act provided at Subsection (b)(2)(4), under the title "Adjudication of Certain Bid Protests and Contract Disputes," that "[a] bid protest or contract dispute that is not addressed or resolved through alternative dispute resolution shall be

¹ Pub. L. 104-50, 109 Stat. 436 (November 15, 1995).

² 61 FR 24348; May 14, 1996.

³ 64 FR 32926; June 18, 1999.

⁴ See 63 FR 49151, September 14, 1998; 65 FR 19958-01, April 13, 2000; 69 FR 17469-02, April 2, 2004.

⁵ See Pub. L. No. 108-176, § 224(b), 117 Stat. 2490, 2528 (codified as amended at 49 U.S.C. § 40110(d)(4)).

adjudicated by the Administrator, through Dispute Resolution Officers or Special Masters of the Federal Aviation Administration Office of Dispute Resolution for Acquisition, acting pursuant to Sections 46102, 46104, 46105, 46106 and 46107 and shall be subject to judicial review under Section 46110 and Section 504 of Title 5.” On January 12, 2011, the FAA proposed to update and streamline the ODRA’s procedural rules by publishing a notice of proposed rulemaking in the Federal Register amended Procedures for Protests and Contracts Dispute (76 FR 2035) which, among other things, reorganized and streamlined the rules, and harmonized them with current statutory and other authority. On September 7, 2011, the FAA adopted the proposed rule, publishing it as a final rule (76 FR 55217) in the Federal Register, with an effective date of October 7, 2011. The full text of the FAA Administrator’s October 12, 2011 Designation and Delegation provides as follows:

In furtherance of an efficient FAA acquisition dispute resolution process, pursuant to 49 U.S.C. §106(f)(2), §§40101, et seq., §46101, et. seq., §40110 and 14 CFR Part 17, I hereby designate the Director and the Dispute Resolution Officers of the Office of Dispute Resolution for Acquisition (“ODRA”) as Administrative Judges for all matters within the ODRA’s jurisdiction and hereby delegate authority to the ODRA Director as follows:

- a. To administer and conduct proceedings in individual bid protests, contract disputes and Circular A-76 contests, to appoint ODRA Dispute Resolution Officers/Administrative Judges and Special Masters to adjudicate all or portions of individual bid protests, contract disputes and contests; and to prepare findings and recommendations as well as proposed final orders in such cases;

- b. To grant or deny dismissal or summary relief in bid protests, contract disputes or contests;
- c. To stay an award or the performance of a contract temporarily, for no more than ten (10) business days, pending an Administrator's decision on a permanent stay. A stay will only be ordered by the ODRA in cases where the ODRA, based on the submissions of the parties, finds compelling reasons which would justify a stay, and recommends a stay to the Administrator;
- d. To dismiss bid protests, contract disputes or contests, based on settlement agreements or voluntary withdrawals by the parties that instituted such proceedings;
- e. To issue procedural and other interlocutory orders aimed at proper and efficient case management, including, without limitation, scheduling orders, subpoenas, sanctions orders for failure of discovery, and the like;
- f. To issue protective orders aimed at prohibiting the public dissemination of certain information and materials provided to the ODRA and opposing parties during the course of bid protest, contract dispute or contest proceedings, including, but not limited to, documents or other materials reflecting trade secrets, confidential financial information and other proprietary or competition-sensitive data, as well as confidential Agency source selection information the disclosure of which might jeopardize future Agency procurement activities;
- g. To utilize voluntary alternative dispute resolution (ADR) methods as the primary means of dispute resolution, in accordance with established Department

of Transportation and FAA policies for using ADR to the maximum extent practicable;

- h. To appoint ODRA Dispute Resolution Officers/Administrative Judges and Special Masters to engage with parties in voluntary, mutually agreeable ADR efforts aimed at resolving acquisition related disputes at the earliest possible stage, even before any formal protest, contract dispute or contest is filed with the ODRA;
- i. To execute and issue, on behalf of the Administrator, final FAA decisions and orders in all matters within the ODRA's jurisdiction, provided that such matters involve either: (1) a bid protest concerning an acquisition having a minimum dollar value of not more than ten million dollars (\$10,000,000.00); or (2) a contract dispute involving a total amount to be adjudicated, exclusive of interest, legal fees or costs, or not more than ten million dollars (\$10,000,000.00). This Delegation does not preclude the Director of the ODRA from requesting, in any matter before the ODRA, that the order setting forth the final decision of the FAA be executed by the Administrator;
- j. 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 for matters within the ODRA's jurisdiction;
- k. To take all other reasonable steps deemed necessary and proper for the management of the FAA Dispute Resolution System and for the resolution of bid protests, contract disputes, or contests, in accordance with the Acquisition Management System and applicable law.

The foregoing authority may be re-delegated by the Director to ODRA Dispute Resolution Officers/Administrative Judges and to Special Masters. This Delegation supersedes and replaces the Delegations issued to the Director of the ODRA on July 29, 1998, March 27, 2000, March 10, 2004 (Delegation), March 10, 2004 (OMB Circular A-76 Delegation), and March 31, 2010.

Issued in Washington, DC, on October 12, 2011.

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