

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

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Contract Dispute of	)	
	)	Docket No. 04-TSA-008
Huntleigh USA Corporation	)	
	)	
Under Contract DTFA01-02-C04025	)	
_____	)	

**DECISION ON MOTION TO FIND**  
**TRANSPORTATION SECURITY ADMINISTRATION IN CONTEMPT**

**Introduction**

On February 24, 2006, counsel for Huntleigh USA Corporation (“Huntleigh”) filed a Motion to Find the Transportation Security Administration in Contempt For Failure to Comply with Protective Orders. (“Motion”). The Motion alleges that, in violation of Orders issued by the Office of Dispute Resolution for Acquisition (“ODRA”), TSA has failed to allow Huntleigh’s counsel access to certain documents already produced to Huntleigh in an action pending in the United States Court of Federal Claims. For the reasons set forth herein, the ODRA finds the Motion to be frivolous and summarily denies it.

**Background**

Counsel for Huntleigh seeks production of documents “previously identified and produced in a federal court case pending before the Federal Court of Claims [sic] entitled, Huntleigh USA Corporation versus the United States, (U.S. Court of Federal Claims, No. 03-26706)” Motion at 1. In a footnote immediately following the above statement, Huntleigh’s counsel states: “Huntleigh is represented by separate counsel in this matter. Therefore, Huntleigh’s counsel in this case has never seen or been provided with copies of the documents in the Federal Court action.” *Id.* at Footnote 1.

The Motion goes on to recount negotiations between the parties with respect to a possible Protective Order admission related to the production of the documents in the Federal Court action. According to Huntleigh's counsel, "in December 2005, negotiations for such a Protective Order broke down." Motion at 2. The Motion goes on to state that the ODRA issued a Protective Order in this case on January 30, 2006 and that, pursuant to applications for admission, Huntleigh's counsel Mr. Mitts and Ms. Plump were admitted to the ODRA Protective Order on February 7, 2006.

Thereafter, Huntleigh's counsel contends he requested in writing that TSA's counsel provide Huntleigh's counsel "access to the documents covered by the January 2006 Protective Order." *Id.* at 2. Finally, Huntleigh's counsel alleges that counsel for TSA did not respond to Huntleigh's counsel's request: "notwithstanding the clear language of the January 2006 Protective Order and the February 6, 2006 Order ... regarding access to the documents in the Federal Court action." *Id.* at 3. Huntleigh urges that TSA's refusal to permit counsel access to documents in the Federal Court action amounts to contempt of the ODRA Protective Order. Motion at 3 – 5.

## **Discussion**

Huntleigh's Motion fundamentally misconstrues the nature, role and language of the ODRA Protective Order. Moreover, it appears that Huntleigh is seeking a contempt sanction for the non-production by TSA of documents that, by Huntleigh's own admission, already were produced to Huntleigh in the Federal Court action.

The purpose of ODRA protective orders is not to mandate production of documents or any other form of discovery. Rather, protective orders safeguard proprietary or competition sensitive information from general disclosure to parties or persons not admitted to the protective order. The ODRA Protective Order here cannot in any way be construed as containing language that mandated TSA to provide discovery to Huntleigh's counsel of the documents involved. Huntleigh's counsel's statement that "the clear

language of the January 2006 Protective Order and the February 2006 Order” mandates production of documents, is without basis in fact or law.

Not only has counsel for Huntleigh sought, improperly, to utilize an ODRA Protective Order as a discovery mandate, but he also would have the ODRA impose a serious contempt sanction on TSA counsel for failure to produce documents that, according to Huntleigh’s counsel, already have been produced to Huntleigh in another case. No explanation has been given as to why counsel for Huntleigh in the ODRA case would not have access to documents already produced to his own client.

### **Conclusion**

The Motion for Contempt is summarily denied. Huntleigh’s counsel is cautioned that future filings of frivolous pleadings of this kind will give rise to the imposition of appropriate sanctions.

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Anthony N. Palladino  
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Office of Dispute Resolution for Acquisition

March 3, 2006

