

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

Protests of)	
)	Docket Nos. 08-ODRA-00452
Air Transport Association)	08-ODRA-00453
Northwest Airlines, Inc.)	08-ODRA-00454
Continental Airlines, Inc.)	08-ODRA-00455
US Airways Group, Inc.)	08-ODRA-00456
United Airlines, Inc.)	08-ODRA-00457
Delta Airlines, Inc.)	08-ODRA-00461
Port Authority of NY & NJ)	08-ODRA-00462
NYAMA)	
)	
Pursuant to SIR Posting 6996)	

DECISION ON REQUESTS FOR EXTENSION OF TIME

This matter currently is before the Office of Dispute Resolution for Acquisition (“ODRA”) on motions for extension of time to file comments (“Motions”). The Motions were filed by counsel for Continental Airlines, Inc. (“Continental”) and counsel for the Air Transport Association of America (“ATA”). The Motions seek an extension of time of 10 business days, *i.e.*, to and until September 25, 2008, for the filing of Comments on the Program Office Response to these consolidated Bid Protests (“Protests”). The Agency Program Office has filed a Motion for Leave to Oppose the Requests for Extension or in the Alternative to Lift the Stay (“Opposition”).¹ For the reasons set forth herein, the Motions are denied.

¹ Following the filing by the Program Office of its Opposition, the ODRA received additional motions for more time to file Comments on behalf of the Port Authority of New York and New Jersey (“Port Authority”) which requested 14 additional days, Delta Air Lines Inc. which requested 10 additional days, and U.S. Airways which requested 10 additional days. This Decision pertains to the Original Motions as well as the subsequently filed motions.

I. Background.

The Motions arise from the Protests, which challenge the FAA's issuance of a Solicitation for the auction of two slot leases at Newark Liberty International Airport ("Slot Auction"). The Slot Auction competition was suspended by Order of the Administrator's Delegee on August 28, 2008 ("Suspension Order"). Pursuant to the Suspension Order, all activities related to the Slot Auction have been stayed pending the issuance of a Final Agency Decision in these Protests. The Suspension Order further confirmed to all parties that "adjudication of this matter will proceed on an expedited basis." *See* Suspension Order at 5. In a Letter dated September 3, 2008, the ODRA confirmed the briefing and adjudication schedule for the Protests. In that Letter, counsel were reminded that the Program Office Response to the Protests was due to be filed by no later than September 4, 2008 and that "Comments on the Agency Response are due to be filed and served by the Protesters within 5 business days of their receipt of the Agency Response." *See* ODRA September 3, 2008 Letter at 2. The Letter also reminded counsel that "the ODRA is adjudicating this case in an expedited manner." *Id.*

The Agency Program Office Response was timely filed in accordance with the ODRA Procedural Regulation, *i.e.*, 10 business days after the status conference held by the ODRA with the parties on August 20, 2008. *See* 14 C.F.R. § 17.17. In accordance with the ODRA's Procedural Regulation, the Comments on the Program Office Response currently are due to be filed by no later than close of business Thursday, September 11, 2008, *i.e.*, 5 business days after the service of the Program Office Response. *See* 14 C.F.R. § 17.37.

In their Motions, Continental and the ATA seek to triple the amount of time called for in the Regulations for the filing of Comments on the Program Office Response, *i.e.*, from 5 business days to 15 business days. In support of the Motions, Counsel cite to the amount of time the Agency has had to file the Program Office Response; the significance of the

issue presented in the Protests; and the comprehensiveness of the Program Office Response.

II. Discussion

The ODRA retains discretion under the FAA Dispute Resolution System to extend filing due dates for good cause shown. *See Protest of HyperNet Solutions, Inc., 07-ODRA-00416, Decision on Request for Extension, dated October 3, 2007.* The circumstances of the Protests here, however, argue strongly against the requested extension. First, the Agency's Program Office Response to the Protests was timely filed in accordance with the schedule established by the ODRA and the ODRA Procedural Regulation at 14 C.F.R. §17.17. Although the Program Office did not file its Response earlier than the due date, as it had previously indicated it would, the filing nonetheless was timely. Nor can it be said that in taking the full time permitted under the Procedural Regulations, rather than filing early, the Program Office acted prejudicially to the interests of the Protesters. Inasmuch as the detailed allegations set forth in the Protests and the issues specifically identified by the ODRA in the Status Conference Memorandum dated August 21, 2008, were well known to parties, the timing of the Program Office Response only served to provide additional time for the Protesters to further brief the legal issues raised in these cases.

Moreover, it must be remembered that the legal arguments involved were presented originally by the Protesters themselves in their Protests and were responded to by the Program Office. Thus, the contemplated Comments are in the nature of a reply by the Protesters to the legal defenses set forth in the Program Office Response. Finally, as all parties are aware (1) the FAA Administrator's Delegee, acting on the recommendation of the ODRA, has suspended the slot auction pending the outcome of these Protests; and (2) this matter is being adjudicated on an expedited basis by the ODRA. Under the circumstances, the Motions' request for a tripling of the amount of time permitted by the Rules for their replies is both unreasonable and completely unwarranted.

For the above reasons, the ODRA concludes that good cause has not been shown for an extension of the established due date for the filing of Comments in these Protests. The Motions therefore are denied.

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

September 8, 2008