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

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

DECISION ON CLAIMANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Introduction

This matter is before the Federal Aviation Administration ("FAA") Office of Dispute Resolution for Acquisition ("ODRA") on the Motion ("Current Motion") of Huntleigh Corporation USA ("Huntleigh") for partial summary judgment filed April 21, 2006. The Current Motion presents the issue of whether the Transportation Security Administration ("TSA") breached an obligation of the parties' letter contract of February 12, 2001 ("Letter Contract") by failing to provide Huntleigh written notice at least 30 days prior to transitioning Huntleigh's performance of civil aviation screening services to federal personnel. The Letter Contract had required Huntleigh to perform screening services at forty-five commercial airports located throughout the United States.

Huntleigh's Contract Dispute, which was filed by Huntleigh on July 12, 2004 ("Original Contract Dispute"), and amended on April 15, 2005 ("Amended Contract Dispute"), alleges that the TSA improperly disregarded its transition notification obligation expressly set forth in a clause of the Letter Contract ("Transition Notification Clause"). *See Agency Response, Volume I, Exhibit No. 4, Letter Contract,* ¶ F.2, *Period of Performance* at 160. The TSA, while admitting that it did not provide Huntleigh with 30 days notice before transitioning the Letter Contract work, contends that its actions were authorized by the Termination for Convenience Clause of the Letter Contract. *See TSA Legal Brief* at 4. For the reasons explained below, the ODRA concludes that: (1) in the

situation presented here, the Transition Notification Clause controlled over the general terms of the Termination for Convenience Clause; (2) in any event the TSA did not terminate the Letter Contract for Convenience; and (3) the TSA's failure to provide written notice to Huntleigh at least thirty days before transitioning any of the pertinent screening services to federal personnel materially breached its obligation under the Letter Contract.

The Undisputed Facts Material to the Notice Issue

Neither party disputes the material facts underlying the current Contract Dispute. Many of the facts are discussed in a separate interlocutory decision that was issued by the ODRA on March 2, 2006, to address various discovery matters that were raised by the parties. *See Contract Dispute of Huntleigh USA Corporation,* 04-TSA-008*, Decision and Order on Discovery*. Additional facts which are relevant deciding the Current Motion are set forth below.

The Aviation Transportation Security Act of 2001 ("ATSA")—which was enacted in response to the September 11, 2001 terrorist attacks on the United States—directed the TSA to assume all of the United States' civil aviation security functions, including the deployment of federal screeners at all domestic commercial airports by November 19, 2002. *See* Pub. L. No. 107-71, 115 Stat. 597 (2001); *see also Globe Aviation Services, Corp. v. TSA,* ODRA Docket No. 04-TSA-0007 at 3. Under the statutory timeframes, the TSA had nine months to transfer the performance of the screening services by commercial contractors to "a federal screening work force" for performance. *See Agency Response, Volume I, Exhibit No. 4, Letter Contract, Identification of Supplies/Services,* ¶ B.1 at 148.

To ensure screening service coverage during this transition period, the TSA decided to award several single source letter contracts to currently performing incumbent contractors, including Huntleigh, who were already successfully performing these

services.[1] *See Huntleigh Amended Contract Dispute, Exhibit A, United States Department of Transportation Letter to Airlines, Screening Companies and Airport Authorities* at 1-2; *Agency Response, Volume I, Exhibit No.* 4, *Letter Contract, Responses to Vendor Questions* at 5-6. Because of the exigent circumstances, the FAA agreed to award and oversee the administration of each Letter Contract until the newly formed TSA possessed the staffing and infrastructure necessary to assume full responsibility for the fully federalized security screening program. *See Contract Dispute of Huntleigh USA Corporation, Decision and Order on Discovery* dated March 2, 2006 at 3 (*citing Globe Aviation Services Corp., supra*).

On January 14, 2002, the FAA issued a Screening Information Request ("SIR") which anticipated the award of multiple single-source, indefinite delivery indefinite quantity ("IDIQ") fixed-price contracts—but only to "incumbent" commercial companies like Huntleigh that were already providing the pertinent security screening services at "current airports and current checkpoints."[2] *See Agency Response, Volume I, Exhibit No.* 1, *SIR* at 5.[3] On February 6, and February 7, 2002, Huntleigh submitted its proposal to provide screening services at thirty-nine United States airport locations. *See Agency Response, Volume I, Exhibit Nos.* 3-4, *Huntleigh Letters to the Contracting Officer* at 68 and 113. On February 15, 2002, following several communications with FAA officials, Huntleigh executed and submitted its Letter Contract to the designated contracting officer, along with an invoice in the "amount of $26 million dollars" that was required by the "Partial Payment" provision of the Letter Contract, and was "to be paid back" by Huntleigh "on a monthly basis in the amount of $1.3 million at the beginning of every month starting April 1, 2002." *Id.*, *Exhibit No.* 4, *Letter Contract*, ¶ G.12, *Partial*

[1] A Letter Contract is a preliminary contractual instrument that allows the government to authorize contractors to begin producing supplies or providing services for which there is not sufficient time before work must begin to negotiate a definitive written contract covering all the usual terms and conditions. *See Decision and Order on Discovery, supra.* Because of the uncertainty that accompanies its undefinitized terms, the Letter Contract is generally not favored—but under certain circumstances, such as the time limit faced by TSA for federalizing all domestic airport commercial screening services, the AMS permits the use of such instruments. *Id.*

[2] The SIR was limited to currently performing companies because it was "not feasible or economically efficient to disrupt" the screening services that were already being provided. *See Agency Response, Volume I, Exhibit No.* 1, *SIR* at 5.

[3] All TSA documents are identified using the Agency Response's pagination.

Payment/Invoices Billing at 166. The contracting officer subsequently executed Huntleigh's submitted Letter Contract on February 17, 2002. *Agency Response, Volume I, Exhibit No.* 4, *Letter Contract, Signature of Huntleigh (dated February 15, 2002) and Signature of Designated Contracting Officer (dated February 17, 2002)* at 144.

The record shows that after it was awarded, the Huntleigh Letter Contract was modified on several occasions. Between March 18, 2002 and June 28, 2002, the designated FAA contracting officer issued five modifications which extended Huntleigh's period of performance, and increased the amount of the Letter Contract's available funding. *Id., Exhibit Nos.* 6-10 at 186-201. On September 5, 2002, the FAA issued another modification which de-obligated and reduced the Letter Contract's available funds by approximately $54 Million dollars. *Id., Exhibit No.* 12 at 205. The following day, September 6, 2002, a newly designated contracting officer from the Defense Contract Management Agency ("DCMA") issued a modification which announced that instead of the FAA, the DCMA would assume the required "administration and payment review" of the Huntleigh Letter Contract on behalf of the TSA. *Id., Exhibit No.* 7 at 207.

In a modification issued October 4, 2002, Huntleigh's performance under the Letter Contract was extended to October 31, 2002. *Id., Exhibit No.* 15 at 212. Thereafter, on November 15, 2002, the Letter Contract was again modified to specify that the "checked baggage screening services" performed by Huntleigh would be "be transitioned to a Government Function prior to December 31, 2002." *Id., Exhibit No.* 18 at 220. This modification also advised Huntleigh that "the Contracting Officer [would] notify the Contractor, in writing, prior to transition." *Id.* On March 27, 2003, another modification was issued which increased the amount of available funding for Huntleigh's Letter Contract by approximately $14 million dollars. *Id., Exhibit No.* 20 at 224.

Huntleigh's Letter Contract contained the following two clauses which are relevant to the Current Motion: (1) a Period of Performance Clause ("POP Clause"); and (2) Acquisition Management System Clause § 3.6.10/4alt "Termination (Cost

Reimbursement) Alternate IV" Clause ("AMS Termination for Convenience Clause"). The POP Clause states as follows:

PERIOD OF PERFORMANCE

> The period of performance for this contract is up to 9 months from the date of contract award. The government anticipates that the services provided under this contract will be transitioned to a governmental function within 9 months of contract award . . . . The Contracting Officer will notify the Contractor in writing at least 30 calendar days in advance of the transition. The services performed under this contract will cease once the transition is completed.

See Agency Response, Volume I, Exhibit No. 4, Part I—Section F Deliveries or Performance, ¶ F.2 at 13. The parties agree that pursuant to this Clause, Huntleigh's performance of the screening services specified in its Letter Contract could be terminated on a checkpoint-by-checkpoint basis, and that the amount of time Huntleigh performed at each of the checkpoints specified in its underlying Letter Contract would likely vary. *See Huntleigh Amended Contract Dispute, Legal Brief*, ¶ III.A at 3; *TSA Legal Brief*, ¶ 3 at 6.

The pertinent AMS Termination for Convenience Clause, which was incorporated into the Letter Contract, set forth the TSA's unilateral right to terminate the Huntleigh Contract for convenience when there is a change in the parties' circumstances. That clause provides, in relevant part, that a contract may be terminated for convenience when:

> the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

See Agency Response, Volume I, Exhibit No. 4, Letter Contract, AMS Termination for Convenience Clause, ¶ f at 1.[4] In the event that a contractor is terminated for convenience, this Clause limits the government's liability—and the terminated

[4] *See AMS Clause* § 3.6.10/4alt, *available at*: http://fasteditapp.faa.gov/ams.

contractor's recovery—to convenience termination damages that are specified within the Clause.[5] *Id.*

In this case, it is undisputed by TSA that for at least fifty-nine of the screening service transitions that were executed between July 15, 2002 and November 8, 2002, the designated Contracting Officer issued notices contemplated by the Transition Notification Clause less than thirty days prior to the transition dates. *See Huntleigh Current Motion, Attachment C.* The record shows that the majority of the Transition Notifications were issued to Huntleigh fourteen or fewer days prior to the designated transition date; and that on at least twelve of these occasions; the Transition Notification wasn't issued to Huntleigh until the actual day on which the transition occurred. *Huntleigh Amended Contract Dispute, Legal Brief,* ¶ III.A at 5; *id., Exhibit C. See also Agency Response, Volume II, Exhibit Nos.* 16 and 18, *Huntleigh Letters to Contracting Officer* dated July 26, 2002 at 260, and October 22, 2002 at 266. In addition, the record demonstrates that Huntleigh advised the designated contracting officer at least thirty-seven times that it had not timely received the Transition Notification specified in the Transition Notification Clause "and that Huntleigh was adversely affected by the short-notice transition". *Huntleigh Current Motion, Legal Brief* at 3; *id., Attachment D.* It is also undisputed that for the first thirty checkpoints where Huntleigh performed the required screening services, "the average notice" window between the TSA's Transition Notification and actual transition of services "was 5.56 days"—which "shrank to 1.96 days" during Huntleigh's performance at the last twenty-nine checkpoints specified in its Letter Contract. *Huntleigh Amended Contract Dispute, Legal Brief,* ¶ III.A at 5.

In its Original Contract Dispute, Huntleigh contended that it was owed approximately $21 million dollars in damages as a result of the TSA's breach of its "legal duty" under the Letter Contract's Transition Notification Clause since the TSA had failed to issue written notice at least thirty days in advance of approximately fifty-nine transition

[5] For example, the pertinent AMS Termination for Convenience Clause used in the Letter Contract specifies that the amount of the contractor's settlement cannot exceed the total contract award price as reduced by the amount of previous payments made to the contractor, or the price of the contract work that was not permitted. *See AMS Clause* § 3.6.10/4alt, *supra*.

actions. *Huntleigh Original Contract Dispute, Legal Brief,* ¶ B.1 at 7-9; *id., Exhibit C.* Huntleigh reported that the 30-day notification window specified in the Letter Contract's POP Clause had been "integral" to its decision to contract with the TSA because this amount of time allowed for the "unprecedented extensive planning, preparation and execution in order to ensure a safe and orderly" transition of each checkpoint's screening function, and because such notification would minimizes the inevitable "turmoil" that would befall Huntleigh and "its employees as each airport's screening was taken over by" the TSA. *Id.*, ¶ III.A at 5.

Following the early designation of an ODRA Neutral, the parties opted to pursue Alternative Dispute Resolution ("ADR"). Thereafter, Huntleigh filed its Amended Contract Dispute, repeating the same breach arguments alleged in its Original Contract Dispute, but seeking a smaller award of damages—$11,175,786.88—together with "interest, costs, and such further and additional relief as justice requires." *See Amended Contract Dispute, Legal Brief* at 10. According to Huntleigh, this amount represents its lost profits as well as the costs that it incurred to transition the services to federal personnel and shut down and remove the Huntleigh personnel from the checkpoint sites. *Id.* at 5-10.

On April 20, 2005, the TSA submitted the Dispute File in accordance with the ODRA's default adjudication procedures, *see* 14 C.F.R. § 17.39(b), and, on June 20, 2005, TSA filed its Agency Response to Huntleigh's Amended Contract Dispute allegations. During the ensuing adjudication and concurrent ADR efforts, the Director of the ODRA conducted several joint status conferences to assess the parties' progress. During a March 17, 2006 Status Conference convened by the ODRA, the parties were directed to submit legal briefs addressing the sole breach of contract allegation raised in Huntleigh's Contract Dispute. *See ODRA Status Conference Memorandum* dated March 17, 2006. On April 21, 2006, Huntleigh responded with the Current Motion for Partial Summary Judgment which seeks a decision from the ODRA on whether the Letter Contract obligated the TSA to provide written notice to Huntleigh at least thirty days prior to each

screening service transition. *See Huntleigh Current Motion, Legal Brief* at 6. On May 12, 2006, the TSA submitted a legal brief responding to the Current Motion ("TSA Legal Brief") as well as a "Supplemental Response" which included an update on the status of the parties' ongoing ADR efforts.[6] On that same date, Huntleigh submitted its "Reply" to the TSA Legal Brief.

The Legal Arguments

According to Huntleigh, the sole "[q]uestion [p]resented" in its Current Motion is "[w]hether or not" the Transition Notification Clause set forth in the Letter Contract required the TSA to provide Huntleigh "with written notice 30 days prior to transitioning" each checkpoint's required screening services to federal personnel. *Huntleigh Current Motion, Legal Brief* at 1. The TSA does not dispute that the Transition Notification Clause specifies that TSA must provide Huntleigh with written notification 30 days prior to the transition of each checkpoint's commercial screening services, and concedes that "Huntleigh received the fifty-nine Transition Notifications less than the 30 days . . . prior to the Federalization of the airport screening responsibilities." *See TSA Legal Brief* at 1. However, the TSA argues that the Letter Contract's "AMS Termination for Convenience" clause provides the TSA with a separate and independent "right to terminate the contract immediately for its convenience" at any time based upon the designated contracting officer's "best interests" determination. *Id.*, ¶ 1 at 2. According to the TSA, the POP Clause does not apply to the 59 transitions that are the subject of the Current Motion because these actions were, in effect, a series of mini-terminations for convenience that are instead governed by the Letter Contract's AMS Termination for Convenience Clause. *Id.*, ¶¶ 2-3 at 5-7.

If the ODRA finds that the AMS Termination for Convenience Clause controls over the Transition Notification Clause in this situation, Huntleigh's recovery will be restricted to

[6] On May 12, 2006, the TSA advised the ODRA that the designated Contracting Officer had unilaterally definitized the Letter Contract in accordance with the "Contract Price Definitization" Clause set forth therein. *See TSA Supplemental Response*. Definitization is not at issue in the Current Motion.

convenience termination costs that are generally limited to compensating the terminated contractor for the work that already had been performed—including initial and preparatory costs and a reasonable profit—and for certain post-termination costs and settlement expenses identified in the Clause. *See AMS Clause* § 3.6.10/4alt, *supra.*

As explained below, the ODRA concludes that the Letter Contract's Transition Notification Clause clearly obligated the TSA to provide 30 days written notice to Huntleigh before transitioning the Letter Contract's commercial screening services to federal workers, and that, on these facts, the notice obligation was not overridden by the presence of the AMS Termination for Convenience Clause in the Letter Contract.

Legal Analysis

Following the standard rules of contract interpretation, the ODRA will interpret the underlying Letter Contract in a manner that gives effect to the mutual intent of the parties at the time the contract was entered into. *See Globe Aviation Services Corporation, supra.* at 23. This means that the ODRA will apply an "objective" standard of contract review that asks what meaning would be ascribed to the Letter Contract by a reasonably intelligent person familiar with the facts and circumstances under which the agreement was made. *Id.* In this regard, The Letter Contracts provisions must be read as a whole and a contract interpretation which gives a reasonable meaning to all of a contract's clauses will be preferred to one which leaves one or more contract clauses useless, meaningless or superfluous. *Id.; see also Mason v. United States*, 222 Ct.Cl. 436, 445, 615 F.2d 1343, 1348 (1980). It is also well-established that no contract clause should be construed as being in conflict with another contract provision unless no other reasonable interpretation is possible. *See The Federal Group, Inc. v. United States*, 67 Fed.Cl. 87 (2005). Moreover, it is a fundamental rule of contract interpretation that a contract's specific provisions take precedence—and control or prevail—over more general ones. *Id.*

Huntleigh's argument that the Letter Contract's Transition Notification Clause governs each of the challenged transitions is grounded on the express terms of that Clause, the rules of contract interpretation referenced above and the undisputed facts. In contrast to normal government contracts practice for convenience termination actions, none of the Transition Notifications that are the subject of this Contract Dispute contain any reference to a "termination" action or the Termination for Convenience Clause. *See Huntleigh Current Motion, Attachment B.* Instead, the record shows that each Notification that was issued to Huntleigh plainly advised that "[i]n accordance with the terms of the Letter Contract . . . you are hereby notified that the government plans to transition to a Federalized work force by assuming all responsibility" for all "screener services." *See Agency Response, Volume II, Exhibit Nos.*4-5, 8; 11-15, 19, 23-31, 33-35, 37-41, and 43-46 at 235-236, 250-259, 268, 274-294, 296-301, 303-312 and 314-322. This provision was drafted and customized solely for the underlying Letter Contract procurement. *Id., Exhibit No.* 3 at 233. In addition, consistent with this clearly stated purpose—to provide transition notification to screening service letter contractors such as Huntleigh—each Transition Notification identified a detailed "transition" schedule. *Id.* While each of these notices also requested that Huntleigh "assist those employees who are being displaced by Federalization to apply for a position with TSA," none of the Transition Notifications contain the typically used "Notice of termination" language, or state any reason—other than the contemplated transition of the work—for ending Huntleigh's performance. *Id.*

The ODRA concludes that, despite the TSA's arguments to the contrary, the underlying Letter Contract's AMS Termination for Convenience Clause does not excuse or override the TSA's transition notification obligation. In contrast to the specific transition-related terms enunciated in the Transition Notification Clause, the AMS Termination for Convenience Clause used in the Letter Contract is a general, boilerplate "Cost-Reimbursable" AMS convenience termination clause that mirrors the standard convenience termination provisions used in most federal procurements and is generically applicable to any procurement subject to the AMS.

In arguing that the identified AMS Termination for Convenience Clause eclipses and supplants the government's obligations under the Termination Notification Clause, the TSA relies on the decision in *Dart Advantage Warehousing, Inc. v. United States,* 52 Fed. Cl. 694 (2002) which the TSA claims involved "a similar situation in which two provisions of a contract provided termination rights." *TSA Legal Brief,* ¶ 1 at 3. In *Dart,* the Court of Federal Claims ("COFC") was asked to decide whether the language of that contract's standard "Termination for Convenience Clause, permitting termination on no notice," and the contract's specialized "Termination on Notice clause, permitting termination only upon" 180 days advance notice could be "reconciled in the same contract." *See Dart, supra.* Emphasizing that a contract must be "construed in its entirety so as to harmonize and give meaning to all its provisions," the COFC concluded that because these two termination clauses had "different purposes," they could reasonably be "read without rendering one of the clauses meaningless" or modified. *Id.*

While the TSA correctly states that the contract interpretation principles in *Dart* are instructive here, TSA's argument that the *Dart* analysis compels the ODRA to conclude that the underlying Letter Contract's AMS Termination for Convenience Clause "would govern" and supplant the obligations of the Transition Notification Clause, is not meritorious. *See TSA Legal Brief,* ¶ 1 at 4. Unlike the *Dart* contract's 180-day "Termination on Notice" provision, the Huntleigh Letter Contract's Transition Notification Clause establishes a notification obligation expressly pertaining only to "transition" actions. *See Agency Response, Volume I, Exhibit No. 4, Letter Contract, POP Clause,* ¶ F.2 at 160. Consistent with this purpose, the pertinent Transition Notification Clause appears in a section of the underlying Letter Contract that pertains solely to the "transition" or "continued performance" of the screening services specified in the Letter Contract. *Id.* In addition to the transition notification obligation, this section of the Letter Contract also instructs the contractor on how to: "negotiate in good faith;" "effect an orderly and efficient transition" of each screening function to the TSA; complete task order forms and work schedules; and identifies the TSA's right to exercise an option to increase the quantity of or extend services. *Id.*, ¶¶ F.1-F.F.7 at 160-162. In contrast, the AMS Termination for Convenience Clause is simply one of several

"conditions" incorporated in a list set forth on the first page of the Letter Contract and is identified as being generally applicable "[in] the event of contract termination." *Id.*,¶ f at 142.

It is well established—both under the AMS and in federal procurement law—that a termination for convenience clause like the one in this Letter Contract can appropriately be invoked by the government in the event of some kind of change from the circumstances of the bargain or in the expectations of the parties. *See Maxim Corp. v. United States,* 847 F.2d at 1549, 1553 (Fed.Cir. 1998). In this regard, it is a fundamental tenet of federal procurement law that that the Government may not use the termination for convenience clause to "dishonor, with impunity its contractual obligations." *See Maxima, supra. (quoting Torncello v. United States,* 681 F.2d 756, 759 (Ct.Cl.1982). This also means that the Government cannot retroactively terminate a contractor for convenience once the underlying contract has been fully performed. *Id.* In this case, it is clear that the transition of work, far from constituting a material "change," expressly was contemplated when the Letter Contract was entered into by the parties—and that the identified Transition Notification Clause was included expressly to govern how any transition of screening services would be accomplished. In addition, there is nothing in this record to support TSA's contention that it intended to invoke the AMS Termination for Convenience Clause to end Huntleigh's performance of the screening services identified in it underlying Letter Contract.

Applying the fundamental contract interpretation principles identified above to the circumstances here, the ODRA concludes that the TSA's transition notification obligation under the Letter Contract's Transition Notification Clause was not excused by the separate AMS Termination for Convenience Clause. The government's notification obligation under the AMS Transition Notification Clause is more specific than and distinguishable from its more general rights under the Termination for Convenience Clause. The Transition Notification and AMS Termination for Convenience Clauses clearly serve different purposes, and this record fails to demonstrate that the contractual circumstances between the parties were changed so as to warrant the government's use of

the Termination for Convenience clause or that the TSA intended to invoke the AMS Termination for Convenience Clause here.[7]

Neither is there a basis for construing the two clauses as being in conflict. Under these circumstances, the ODRA concludes that the Letter Contract's Termination for Convenience Clause did not shield the TSA from its specific obligation under the Transition Notification Clause to provide written notification to Huntleigh at least 30 days prior to transitioning any of the Letter Contract's identified screening services to a federalized workforce. *See Municipal Leasing Corp. v. United States,* 7 Cl.Ct. 43 (1984) (termination for convenience clause did not excuse Air Force's separate obligation under contract's "Best Efforts" clause to seek funds to renew the contract's second option year); *Commercial Drapery Contractors, Inc v. United States,* 133 F.3d 1,3 (D.C.Cir.1998) (government contract's 30-day Termination on Notice clause was not in conflict with the Termination for Convenience clause because the "words of the two clauses establish not only the differences the amount of notice required to terminate, but also the circumstances covered and purpose and intent of each clause."); *Olympia Properties L.L.C. v. United States*, 54 Fed.Cl. 147 (2002) (rejecting contractor's interpretation—that 120-day Termination on Notice-type provision sets forth "the only circumstances in which the government could terminate the lease—because this interpretation "would render inoperative the standard termination provisions.").

[7] In its Response, the TSA also argues that if the Notifications do not constitute convenience terminations, the Notifications can instead be construed as constituting "a series of deductive changes to the contract" that would limit Huntleigh's recovery to an equitable adjustment. *See AMS Pricing Handbook, Equitable Adjustments, Chapter* 16 available at http://fast.faa.gov/pricing. Neither the TSA nor the current record offer any corroborating evidence in support of this argument. *See Protest of Knowledge Connections, Inc., Decision on TSA Motion to Dismiss Protest* dated May 5, 2006, 06-TSA-024. Nor will the ODRA credit the TSA's contention that the Huntleigh Letter Contract expired October 31, 2002. The only basis for this argument is the TSA's tentative advisory that October 31, 2002 "appears to have been the last day of contractually authorized performance" because the TSA's "search of the Official Contract File failed to produce any subsequent extensions" for the screening services work. *TSA Response* at 6. Here, the record demonstrates that at least one post-October 31, 2002 modification to the Letter Contract increased the available funding for the specified screening services, *see Agency Response, Exhibit No. 20* at 224, while another modification dated November 15, 2002 suggested December 31, 2002 as a possible transition date. *See Agency Response, Exhibit No.* 18 at 220.

Conclusion

For the reasons set forth above, the ODRA concludes that the TSA was obligated by the Letter Contract's Transition Notification Clause to provide written notification to Huntleigh at least 30 days prior to transitioning the underlying Letter Contract's screening services to the federalized screening workforce, and that the TSA's admitted failure to provide the requisite notices of the identified transitions constituted a breach of TSA's contractual obligation. The ODRA further concludes that the specific terms of the Transition Notification Clause control over the Termination for Convenience Clause in the situation presented here; and that, in any event, the TSA's transitioning of work from Huntleigh did not constitute a termination for convenience of the underlying Letter Contract.

-S-

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May 30, 2006