

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

<u>Contract Dispute of</u>)	
)	Docket No. 08-ODRA-00473
Hillsborough Veterans Commerce Park)	
)	
<u>Pursuant to Solicitation DTFASO-05-L-00026</u>)	

DECISION ON RECONSIDERATION REQUEST

This matter currently is before the Federal Aviation Administration ("FAA") Office of Dispute Resolution for Acquisition ("ODRA") on a request ("Request") of Hillsborough Commerce Park Trust ("Hillsborough") seeking reconsideration of the Decision and Order of March 2, 2010 ("Decision"). In the Decision, the ODRA, acting pursuant to a Delegation of final decisional authority from the FAA Administrator, denied Hillsborough's Contract Dispute in its entirety. For the reasons discussed herein, the ODRA summarily denies the Request as meritless.

I. FACTUAL BACKGROUND

This Dispute arose from a series of real estate leases entered into between the FAA Southern Region ("Region") and a series of owners of commercial office space in Tampa, Florida. Hillsborough, the current owner of the property, sought payment from the Region in the total amount of \$279,834.05 for building remodeling, utilities, and additional lease space.

The Contract Dispute originally was filed with the ODRA on November 6, 2008. Thereafter, in accordance with the ODRA dispute resolution regulations at 14 C.F.R. Part 17, the parties entered into a voluntary alternative dispute resolution ("ADR") agreement. Negotiations continued through June 30, 2009, whereupon an adjudication schedule was

established for the case. Scheduled status conferences were held during the ADR and adjudication phases of the case. Hillsborough was represented throughout the pendency of the Contract Dispute by Mr. Bruce Wrinkle. At a status conference held on July 23, 2009, a schedule for the adjudication was established. It called for: the Region Dispute File response by no later than August 24, 2009; commencement of discovery for a sixty (60) calendar day period after filing and service of the Dispute File; filing by Hillsborough of a Supplement to the Agency Dispute File, fifteen (15) calendar days after the close of discovery; and filing of dispositive Motions by either party by no later than Tuesday, December 1, 2009. The Status Conference Memorandum further indicated that a final conference would be held in order to schedule the filing of Final Submissions by the parties. The same Status Conference Memorandum reflects that "Mr. Winkle stated that Hillsborough is contemplating hiring counsel, but has not made a decision at this time." The Status Conference Memorandum further reflects that:

The participants were informed that the ODRA will not unduly delay the schedule for the adjudication and Mr. Wrinkle stated that Hillsborough is opposed to any extensions of time on this case.

The Southern Region filed a Motion to Dismiss on August 14, 2009 and filed its Agency Dispute File on August 24, 2009. Hillsborough did not file a Response to the Motion to Dismiss, nor did Hillsborough file a Supplement to the Dispute File. On December 2, 2009, in a letter to the parties, the ODRA established a schedule for the completion of the remaining portion of the adjudication. Hillsborough was directed to file and serve its Final Submission by no later than January 15, 2010; and the Region was directed to file and serve its Final Submission by no later than January 29, 2010. The Letter further set out mandatory elements that were required to be included in the Final Submissions. Those requirements included:

- (1) a statement of the factual and legal issues;
- (2) a statement of undisputed facts related to each issue;
- (3) a statement of disputed facts related to (if any) each issue with appropriate citations to documents in the dispute file, pages of transcripts of any hearing or depositions, and any affidavit or exhibit that the party may wish to submit with its statement; and
- (4) legal analysis in support of the parties position on a disputed issue(s).

See Letter of December 2, 2009.

The parties further were informed that if they requested a hearing they must provide additional information supporting the need for a hearing. Finally, the Letter advised the parties that “failure of either of the parties to comply with requirements of Section 17.39 of the Procedural Regulations ... may result in the imposition of appropriate sanctions.” *Id.* at 2. Hillsborough failed to file a Final Submission and did not request additional time within which to file one. In a letter dated July 19, 2010, the ODRA informed the parties that it has not received a Final Submission from Hillsborough. The parties were further informed that “upon receipt of the Region’s Final Submission or its election not to file one, the record in this matter will close and the case will proceed to a final Agency Decision.” On January 25, 2010 the Region informed the ODRA, with a copy to Hillsborough, that the Region “elects not to file a Region’s Final Submission and hereby reaffirms the arguments submitted in the Region’s dispute file.” Thereafter, the record closed.

The ODRA’s Findings and Recommendations and the Final Order of the Agency were issued on March 2, 2010. On that same date, shortly after the service of the Findings and Recommendation and Final Order, the ODRA received a request for an extension of time from counsel for Hillsborough, who had not entered an appearance previously. The ODRA responded the following day indicating that there could be no extension of time inasmuch as the Final Decision had been issued. *See* Letter of March 3, 2010. The Request for Reconsideration was filed with the ODRA on March 22, 2010. The Region responded to the Request on April 6, 2010, and Hillsborough filed its Reply to the Region’s Response on April 7, 2010.

II. DISCUSSION

A party seeking reconsideration at the ODRA has the burden of demonstrating: (1) clear errors of material fact or law in the underlying decision; or (2) previously unavailable information that would warrant reversal or modification. *See Protests of Hi-Tec Systems, Inc.*, 08-ODRA-00459,-00460 (Consolidated), *Decision Denying Motion for Reconsideration dated November 20, 2008*; *Protest of Maximus, Inc.*, 04-TSA-009,

Decision Denying Maximus Inc.'s Motion for Reconsideration dated November 29, 2004; *Protest of Raytheon Technical Services Company*, ODRA Docket No. 02-ODRA-00210, *Findings and Recommendations on Motion for Reconsideration* dated April 10, 2002; *Protest of Consecutive Weather*, 99-ODRA-00112, *Recommendation Regarding Reconsideration Request* dated July 13, 1999; *Consolidated Protests of Camber Corporation and Information Systems and Networks Corporation*, 98-ODRA-00079 and 98-ODRA-00080, *Motion for Reconsideration* dated July 23, 1999.

This Office has held that: "consistent with maintaining an efficient dispute resolution process, the ODRA will not entertain [reconsideration] requests as a routine matter and will not 'consider requests demonstrating mere disagreement with a decision or restatement of a previous argument.'" *Protest of Hi-Tec Systems, Inc., supra*, quoting from *Protest of Maximus, Inc., supra*. "An attempt to either re-litigate previously adjudicated issues or to introduce new legal arguments based on the original administrative record will not provide a basis for reconsideration." *Id* at 2 citing *Protest of Raytheon Technical Services Company*, 02-ODRA-00210, *Findings and Recommendations on Request for Reconsideration of the Merits and for Clarification* dated April 22, 2002.

As its discussed above, Hillsborough's request is based on its allegations that: (1) that the ODRA "did not properly and fully consider the effects of the FAA's letter of November 22, 2005 and any failure on the part of Hillsborough to provide other submissions of factual data is a result of bad faith on the part of the FAA"; and (2) that the health of Hillsborough's representative, Mr. Wrinkle "has drastically deteriorated and he has been unable to fully assist Hillsborough's other representatives in pursuing its claims in the dispute process." *See Request at 3*. In response to these allegations, The Region's Opposition to the reconsideration request ("Opposition") asserts that Hillsborough's Request "has not presented any evidence of clear errors of fact or law in the underlying Decision, or that evidence that was previously unavailable warrants reversal or modification." *Opposition at 2*. The Opposition further points out that the letters referenced in the Request previously were included in the Region's Dispute File, at Tabs

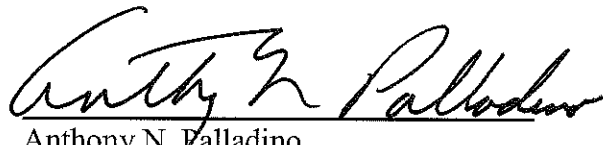
26 and 36. *Id.* The Region goes on to note that the Request “demonstrates mere disagreement with the Decision in this case. It cannot be stressed enough that Hillsborough failed to respond to any of the ODRA’s deadlines throughout the adjudication process, and submitted their request for reconsideration only upon learning that the Region has prevailed in the case.” *Id.* Finally, the Region asserts that Mr. Wrinkle participated in negotiations with the Region throughout the adjudication process. The Region’s assertion in this regard is supported by the sworn Declaration of Ms. Shirley A. Williams, a real estate contracting officer for the FAA’s Eastern Logistics Service Center.

In its Reply to the Opposition, Hillsborough attempts to re-litigate issues concerning payment for utilities and responsibility for the payment of utilities under the Lease. *See Reply at 2,3.* These issues squarely were raised in the original proceeding, and as noted in the Decision, Hillsborough failed to meet its burden of proving that the FAA had an obligation under the lease to pay for utilities and for additional square footage in the building. *See Decision at 11-14.* With respect to allegations of illness on the part of Mr. Wrinkle, Hillsborough’s own pleading refers to other representatives of Hillsborough, who apparently could have substituted for Mr. Wrinkle. Hillsborough’s Request states: “Over the past several months Mr. Wrinkle’s health has drastically deteriorated and he has been unable to fully assist Hillsborough’s other representatives in pursuing its claims in the dispute process.” *See Request at 3.* Furthermore, the failure of Hillsborough to meet filing deadlines is well documented in the record and extended over a period of several months, including a period when Mr. Wrinkle was negotiating with the Region over a new lease. Finally, although Hillsborough alluded to an intent to retain counsel, no entry of appearance, request for a suspension of proceedings or request for an extension of time were filed with the ODRA until after the decision had been issued.

III. CONCLUSION

Hillsborough’s request utterly fails to allege, much less prove either that the Decision was based on clear errors of material fact or law, or that there is new previously

unavailable evidence that should be considered. Rather, the Request cites to an illness of Hillsborough's representative and to documents that already were part of the administrative record. Neither of these can properly support a reconsideration request. *See Protests of Hi-Tec Systems, Inc., supra; Protest of Raytheon Technical Services Company, supra.* For the foregoing reasons, the ODRA will not reconsider the Decision in this case, and the Request therefore is denied.

A handwritten signature in dark ink, reading "Anthony N. Palladino". The signature is fluid and cursive, with the first name "Anthony" and last name "Palladino" clearly legible.

Anthony N. Palladino
Associate Chief Counsel and Director
FAA Office of Dispute Resolution
For Acquisition
April 20, 2010