



**In the Matter of:**

**GREATER ORLANDO AVIATION  
AUTHORITY,**

**ARB CASE NO. 07-037**

**In re: Review and  
Reconsideration of Wage**

**DATE: July 27, 2007**

**Determinations under the  
McNamara-O'Hara Service Contract Act,  
Wage Determination No. 2006-0350**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Petitioner:*

**Keith F. White, Esq., Kimberly Doud, Esq., *Broad and White*, Orlando, Florida**

*For Respondent Administrator, Wage and Hour Division:*

**Jennifer R. Marion, Esq., William C. Lesser, Esq., Steven J. Mandel, Esq.,  
Jonathan L. Snare, Esq., *United States Department of Labor*, Washington,  
District of Columbia.**

**FINAL DECISION AND ORDER DISMISSING  
PETITION FOR REVIEW WITHOUT PREJUDICE**

The Greater Orlando Aviation Authority filed a Petition for Review with Administrative Review Board in this case allegedly arising under the McNamara-O'Hara Service Contract Act (SCA).<sup>1</sup> The Board issued a Notice of Appeal and Order Establishing Briefing Schedule. In response, the Administrator, Wage and Hour Division, filed a Motion of the Administrator to Dismiss Without Prejudice. The Board permitted the Aviation Authority to respond to the Administrator's Motion, but the Board has received no response.

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<sup>1</sup> 41 U.S.C.A. §§ 351-358 (West 1994).

On or about May 15, 2006, the Aviation Authority entered into a contract with Primeflight Aviation Services, Inc. to supply Customer Service Representatives (CSRs), whose duties were related to reducing delays associated with baggage and passenger screening at the Orlando International Airport in Orlando, Florida. The Authority contends that on June 1, 2006, it learned of a Transportation Security Administration (TSA) Customer Service/Baggage Handling Pilot Program under which TSA would reimburse the Aviation Authority for the CSRs' labor costs.

To participate in the Pilot Program the Aviation Authority was required to obtain a wage determination for the CSRs in accordance with the SCA. At the TSA's request, the Wage and Hour Division (WHD) issued a determination on June 9, 2006. On June 29, 2006, after the TSA resubmitted its request, the WHD issued a revised Wage Determination No. 2006-0350, at issue in this appeal. On November 3, 2006, the Aviation Authority requested reconsideration of the Wage Determination.

On December 6, 2006, the Acting Chief for the Branch of Service Contract Wage Determinations, on behalf of the Administrator, denied the request for reconsideration on the ground that the request was untimely pursuant to 29 C.F.R. § 4.56(a)<sup>2</sup>. The Acting Chief did not address the merits of the Aviation Authority's request for reconsideration.

The Administrator, in his Motion to Dismiss, avers that since the Aviation Authority filed its petition for review, the Administrator has become aware the Authority never entered into a contract with the TSA. The Administrator has concluded that because there has been no commencement of a contract, the time limit set forth in section 4.56(a) has not begun to run. Accordingly, the Administrator concedes that the request for reconsideration was timely and states that the Administrator is reviewing the request for reconsideration on the merits. Therefore, the Administrator asks the Board to dismiss the petition for review, without prejudice. The Aviation Authority has not objected to the

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<sup>2</sup> This regulation prohibits the Administrator from reviewing a wage determination "after the opening of bids in the case of a competitively advertised procurement, or, later than 10 days before commencement of a contract in the case of a negotiated procurement, exercise of a contract option or extension."

Administrator's Motion and finding no reasonable basis for such objection, we **GRANT** the Motion and **DISMISS** the Aviation Authority's appeal.<sup>3</sup>

**SO ORDERED.**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**

**DAVID G. DYE**  
**Administrative Appeals Judge**

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<sup>3</sup> We note that the Administrator states in his Motion, "The SCA applies only to contracts entered into by the United States" and acknowledges that there has been no such contract in this case. This assertion thus raises the issue whether the Board has authority independently of the SCA to consider any appeal in this case. Should the Authority desire to appeal the Administrator's decision on reconsideration, it will be necessary to resolve the issue of the Board's jurisdiction to consider such appeal, prior to consideration of the appeal on its merits.