

1-A CONSTRUCTION & FIRE,)	AGBCA No. 2004-191-1
)	
Appellant)	
)	
Representing the Appellant:)	
)	
Patricia A. Maier, General Manager)	
1-A Construction & Fire)	
31156 Follett Lane)	
Hermiston, Oregon 97838)	
)	
Representing the Government:)	
)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

September 15, 2004

Before POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge VERGILIO.

By letter dated July 21, 2004, 1-A Construction & Fire (vendor) of Hermiston, Oregon, filed this appeal with the Board, involving the U. S. Department of Agriculture, Forest Service (Government). The vendor had responded to a request for quotation (RFQ), No. R6-04-019, as it submitted an application to obtain a 2004 Pacific Northwest Interagency Engine and Tender Agreement with Region 6 of the Forest Service. A pre-condition to entering the agreement is that offered equipment must have passed an initial inspection. The vendor maintains that its offered water tender had acceptable brakes, but that the inspector improperly failed the brakes at the initial inspection. The vendor seeks to recover \$785.36, said to be its costs associated with having new brakes installed prior to the vendor entering an agreement with the Government. The contracting officer issued a decision denying the request for payment and specifying appeal rights. This appeal ensued.

The Board has jurisdiction over contract disputes pursuant to the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613, as amended (CDA). During the initial telephone conference, held on August 12,

the presiding judge and parties discussed that this Board's authority and jurisdiction are limited under the CDA. The vendor is tasked with establishing that a contract existed so as to give this Board jurisdiction under the CDA.

During the telephone conference, it was noted that the initial inspection occurred as a pre-condition and prior to the parties signing a tender agreement for the year of services affected by the inspection.

Appellate authority has held that similar tender agreements do not constitute contracts under the CDA, such that the Board lacked jurisdiction over a claim regarding the tender agreements and alleged Government inaction prior to an order being placed under the agreements. Ridge Runner Forestry v. Veneman, 287 F.3d 1058 (Fed. Cir. 2002). Apart from the tender agreement, the vendor suggested that a contract arose with the Government by the fact that the Government mandated an initial inspection and identified the acceptable inspectors. The vendor was given the opportunity to engage in discovery and obtain material from the Government relating to the jurisdictional issue.

As indicated in a letter to the Board dated September 14, 2004, the vendor has concluded that there was no contract on which to claim Board jurisdiction. Although the vendor continues to believe that the tender was improperly inspected at the initial inspection, thereby placing the vendor in the position of having to pay for brake work that was not necessary, the vendor seeks to withdraw its appeal.

DECISION

In light of the requested withdrawal, the Board dismisses this appeal.

JOSEPH A. VERGILIO

Administrative Judge

Concurring:

HOWARD A. POLLACK

Administrative Judge

ANNE W. WESTBROOK

Administrative Judge

Issued at Washington, D.C.

September 15, 2004