

GRAVES EXCAVATING,)	AGBCA No. 1999-193-1
)	
Appellant)	
)	
Representing the Appellant:)	
)	
Michael Northcutt)	
Quane Smith)	
River Front Place)	
283 West Front Street, Suite 201)	
Missoula, Montana 59802)	
)	
Representing the Government:)	
)	
Marcus R. Wah)	
Office of the General Counsel)	
U. S. Department of Agriculture)	
P.O. Box 7669)	
Missoula, Montana 59807)	

DECISION OF THE BOARD OF CONTRACT APPEALS

October 21, 1999

OPINION BY ADMINISTRATIVE JUDGE JOSEPH A. VERGILIO

Graves Excavating (contractor) of Libby, Montana, filed this appeal with the Board on August 24, 1999. The respondent is the U. S. Department of Agriculture, Forest Service (Government). The dispute involves a blanket purchase agreement (call-when-needed equipment rental), Contract No. 45-03J1-8-0067, for an excavator to be used in the Libby Ranger District of the Kootenai National Forest in Montana. Under the agreement, the Government issued a task order for an excavator. After modifications, the total number of estimated hours for use was 740. After 676 hours of performance, the excavator was destroyed by a fire, for which the Government has assumed responsibility.

The contractor filed a claim to recover \$70,329.41. The contracting officer granted \$63,370.59 and denied \$6,958.82. Here, the contractor seeks to recover \$6,732 relating to two aspects of its claim. The two elements are for the lost value of the vehicle (based upon its purchase cost) and for work not completed under a purchase order ("down time") -- 40 hours of work under a purchase order, which the contractor was unable to complete. Utilizing a depreciated value of the vehicle, as opposed the purchase cost, the contracting officer allowed all but \$3,832 of the requested cost for

the loss of the vehicle. The contracting officer disallowed the entire claim of \$2,900 for “down time,” because the contractor had not worked those hours and had not mitigated damages.

The Board has jurisdiction over this timely-filed appeal pursuant to the Contract Disputes Act (CDA), 41 U.S.C. §§ 601-613, as amended. After the submission of an appeal file and a complaint, the contractor requested, on October 21, that the appeal be dismissed with prejudice. The Government does not oppose the request.

DECISION

The Board dismisses with prejudice the appeal.

JOSEPH A. VERGILIO

Administrative Judge

Concurring:

EDWARD HOURY

Administrative Judge

HOWARD A. POLLACK

Administrative Judge

Issued at Washington, D.C.

October 21, 1999