

BROWN'S CHUCK WAGON CATERING,)	AGBCA No. 98-150-1
)	
Appellant)	
)	
Representing the Appellant:)	
)	
Sharon Brown)	
3332 Table Rock Road)	
Medford, Oregon 97504)	
)	
Representing the Government:)	
)	
Timothy J. Binder)	
Office of the General Counsel)	
U. S. Department of Agriculture)	
1220 S. W. Third Avenue, Room 1734)	
Portland, Oregon 97204-2825)	

DECISION OF THE BOARD OF CONTRACT APPEALS

February 2, 1999

OPINION BY ADMINISTRATIVE JUDGE HOWARD A. POLLACK

This appeal arose as a result of a dispute over Purchase Order No. 43-0M00-5-0198 between Brown's Chuck Wagon Catering (Brown's or Appellant) of Medford, Oregon, and U. S. Department of Agriculture, Forest Service (FS), Siskiyou National Forest, Grants Pass, Oregon. The Purchase Order called for Brown's to provide mobile food service for a 2½-to-3 month duration starting some time after September 8, 1995. The contract contained clauses dealing with the cancellation or releasing of mobile food service, which more specifically provided that the food service could be canceled at any time prior to any meals being served or could be released at any time after serving had begun. The contract continued, that notice of cancellation would be provided the contractor by the Contracting Officer (CO) 1 week in advance with no other guarantees. The contract also contained provisions dealing with termination for convenience.

On October 22, 1995, the FS gave notice to Appellant that catering services would not be needed after the evening meal of October 23, 1995. A dispute then arose over costs involved in that ending of performance. A series of letters was exchanged by the parties through the latter part of 1995 and into 1996. In a letter of December 7, 1995, the CO indicated that Appellant might be entitled to additional costs under termination for convenience. Appellant then submitted additional letters as to its claim. The Appellant's last letter from the CO was March 12, 1996. In that letter, the CO authorized payment of \$540 due to the shortened termination notice and invited Appellant to provide by March 29, 1996, any additional information which would lead to a different conclusion.

Appellant responded by letter of March 28, 1996, wherein it provided additional information regarding lost inventory and cost and requested \$4,942.09. Appellant, after receiving no response to the March 29, 1996 letter, then wrote to the CO by letter of July 25, 1996. In that letter, Appellant asked for a final response within 60 days or a check for payment. Appellant received no response.

By letter dated February 5, 1998, Appellant wrote to the Board and requested the Board's assistance regarding its claim. The Appellant represented that the CO had not responded to its July 25, 1996 letter.

By letter of March 4, 1998, the Board docketed Appellant's appeal as a deemed denial due to the failure of the FS to issue a final decision on Appellant's claim.

On June 1, 1998, the Board held a telephone conference with the parties at which time the Board, in an attempt to facilitate settlement, provided its preliminary views as to the merits of the case and as to quantum issues.

Thereafter, the parties exchanged letters addressing the issues and discussing settlement. Then, by letter of October 5, 1998, the FS through counsel, advised the Board that the appeal had been settled and requested that the appeal be dismissed with prejudice. Counsel for the FS attached to the letter a copy of the settlement agreement which called for dismissal with prejudice as part of the overall settlement.

DECISION

In accordance with the request of the parties and their settlement, the appeal is dismissed with prejudice.

HOWARD A. POLLACK
Administrative Judge

Concurring:

EDWARD HOURY
Administrative Judge

ANNE W. WESTBROOK
Administrative Judge

Issued at Washington, D.C.
February 2, 1999