



February 16, 2007

Mr. James Norris Lewis  
President  
Sharantee Services  
Post Office Box 955  
Goliad, Texas 77963-0955

RE: Supplier Disagreement Resolution Case No. OM07MT-06  
Highway Contract Route (HCR) Number 780L1

Dear Mr. Lewis:

Your letter of December 27, 2006 presented a disagreement as defined in 39 CFR Part 601 with respect to HCR No. 780L1. You contend that your contract award was improperly withdrawn; and that the contracting officer used your termination for default in HCR 77930 as a basis for poor past performance in the award of HCR No. 780L1. You further contend that the settlement of your appeal to the Postal Service Board of Contract Appeals (PSBCA) in HCR 77930 resolved any issue of poor performance under that contract.

I have examined the disagreement lodged with me as well as the supplemental information you have provided. I have also examined the contracting officer's administrative file and the PSBCA's decision. As a result of that review, I have determined that the contracting officer failed to follow the terms of the contract, HCR 780L1. On November 21, 2006, you were awarded temporary HCR No. 780L1. Subsequently, effective as of December 6, 2006 the contracting officer, Manager, Transportation Contracts of the Southwest Area Distribution Networks, who had knowledge of poor performance issues concerning your performance of HCR No. 77930 withdrew your contract award. The contracting officer compensated you for your performance on the contract from November 22, 2006 thru December 6, 2006 (\$4,984.80).

According to B.9 of the contract "Any contract resulting from this solicitation may be terminated by either party upon 30 days written notice." The contracting officer had the right under the contract to terminate the award upon 30 days written notice for any reason. (Contrary to your contentions, I conclude that nothing in the file regarding the resolution of PSBCA No. 5347, in which you challenged the termination for default of HCR No. 77930 for poor performance, including the conversion of the termination into a termination for convenience, precluded the contracting officer from using that record of poor performance with regard to your future evaluation.) However, the contracting officer erred in failing to give you 30 days notice when he undertook to "withdraw" the contract award and paid you for services rendered. In this instance, the contracting officer did not properly follow the termination procedures under clause B.9 (Termination of Notice) of the contract.

Accordingly, It is my decision that Sharantee Services must be paid, at the contract rate for the additional thirty day period it would have performed its contract had it been given the notice which subparagraph (a) of the Termination of Notice clause provided. The contracting officer is hereby directed to make the appropriate payment.

This is the Postal Service's final decision on this disagreement regarding HCR No. 780L1 under 39 CFR 601.108(h).

Sincerely,

A handwritten signature in black ink that reads "Juanda J. Barclay". The signature is written in a cursive, flowing style.

Juanda J. Barclay, C.P.M., A.P.P.  
USPS Supplier Ombudsman

cc: Eracio Rodriguez