

December 6, 2006

Mr. Dewayne Drinnen
Drinnen Trucking Company
696 Longhollow Road
Maryville, Tennessee 37801

RE: Supplier Disagreement Resolution Case No. OM07MT-05
Highway Contract Route No. 378FV

Dear Mr. Drinnen:

Your letter of November 24 seeks my involvement, as ombudsman, in a "disagreement," as defined in 39 Code of Federal Regulations (CFR) Part 601 with respect to an emergency Highway Contract Route (HCR) contract for route 358FV which you received on June 22, 2006. I have examined the information you provided and additional data provided by the contracting officer. Based on this information, I have concluded that this is not a matter within my jurisdiction as Ombudsman.

Your letter recites the circumstances of the award of your contract for service commencing July 1, 2006, the termination of that contract effective as of October 1 and the award of a contract for the replacement service to another contractor. With one exception, your objections arise from the contracting officer's failure to respond to an element of your offer contending that the emergency solicitation misstated the size of the vehicle requested, the termination of your contract short of its six-month term, and a dispute concerning payment for fuel consumed under the contract. All of these matters are, in the words of 39 CFR 601.108, Ombudsman Disagreement Resolution, at (b) "claims that arise pursuant to a contract under the Contract Disputes Act," which are excepted from the ombudsman's jurisdiction, and accordingly, not for my consideration. With respect to those matters, I call your attention to the Claims and Disputes clause of your contract, which calls for the matters to be presented to the contracting officer for a final decision which, once issued, is subject to further review either before the Postal Service Board of Contract Appeals or the Court of Federal Claims.

The single exception noted above is the following sentence from your letter: "The permanent contract was awarded to another company at such a low rate that it is impossible to operate." That sentence raises a matter which could be a "disagreement" within my jurisdiction. However, 39 CFR 601.108(e) provides that a matter must be lodged with the ombudsman no later than "twenty calendar days after the time it was presented [to the contracting officer as provided] in Sec. 601.107" and Sec. 601.107 requires that a disagreement "must be lodged with the responsible contracting officer for resolution within 10 days of the date the disagreement arose." While it is not clear from your correspondence whether this objection to the award was lodged with the contracting officer, and if so, when, it is clear from the fact that performance under the new contract was to begin on October 1 that if the matter was timely presented to the contracting officer, its presentation to this office now is untimely, and not for my consideration.

Sincerely,



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

cc: Bobby L. Mays