

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD**

APPEAL OF:

US FOODS, INC.)	
)	
)	CAB No. D-1584
Under Contract Nos. CW88127, CW88323, and)	
CW88326)	

**ORDER GRANTING JOINT MOTION FOR ALTERNATIVE DISPUTE RESOLUTION
(ADR) AND FOR TEMPORARY STAY OF PROCEEDINGS**

Filing ID #68910443

Presently before the Board is a December 22, 2022, joint motion by the parties in the above-captioned appeal which requests that the Board (1) mediate the parties' dispute pursuant to Board Rule 217.3(a); (2) appoint the presiding judge, Chief Administrative Judge Marc D. Loud, Sr., as the Board Neutral for the mediation; and (3) temporarily stay this appeal for 60 days. (*See generally* Joint Mot. for Alternative Dispute Resolution (ADR) & for Stay of Proceedings ("Joint Mot. for ADR & Stay") at 1-2.) *See also* D.C. MUN. REGS. tit. 27, § 217.3 (2020). Upon review of the joint motion, and the entire record herein, the Board hereby grants the parties' motion as noted herein, and orders the following:

- (1) The parties shall file a joint proposed mediation agreement by Friday, February 3, 2023. Although a sample mediation agreement is attached to this order as Attachment 1, the parties may propose any form of mediation agreement that is mutually agreeable. However, the mediation shall not be deemed to have commenced until the mediation agreement has been (i) approved by the Board; and (ii) executed by the parties.
- (2) Upon execution and Board approval of the mediation agreement, Chief Administrative Judge Marc D. Loud, Sr., is designated as the Board Neutral for the mediation. *See* D.C. MUN. REGS. tit. 27, § 217.2(a). Pursuant to Board Rule 217.3(a), "[n]o judge who has participated in discussions about the mediation will participate in a Board decision of the case if the ADR is unsuccessful." D.C. MUN. REGS. tit. 27, § 217.3(a). Therefore, in the event that the mediation herein commences but is unsuccessful, the Board Neutral shall not participate further in the Board's consideration of this appeal, and the matter shall be reassigned to another Administrative Judge.
- (3) All proceedings in this matter are hereby stayed for 90 days from the date of this order. This period may be enlarged upon a showing of good cause. *See* D.C. MUN. REGS. tit. 27, § 123.1.
- (4) Notwithstanding the above, the Board sets October 29 - November 1, 2024, as the hearing dates in this matter. This Order stays finalization of other scheduling dates pertaining to this case until after the instant stay expires.

SO ORDERED.

Date: January 17, 2023

/s/ Marc D. Loud, Sr.
MARC D. LOUD, SR.
Chief Administrative Judge

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ATTACHMENT 1:

**SAMPLE AGREEMENT TO UTILIZE MEDIATION PROCEDURES PURSUANT TO
BOARD RULE 217.3(a), D.C. MUN. REGS. TIT. 27, § 217.3(a) (2020)**

**AGREEMENT TO UTILIZE MEDIATION PROCEDURES PURSUANT TO BOARD
RULE 217.3(a), D.C. MUN. REGS. TIT. 27, § 217.3(a) (2020)**

THIS AGREEMENT is entered into by and between US Foods, Inc. (“Appellant”) and the District of Columbia (the “District”).

WHEREAS, Appellant and the District entered into Contract Nos. CW88127, CW88323, and CW88326; and

WHEREAS, Appellant filed with the District of Columbia Contract Appeals Board an appeal under said contract; and

WHEREAS, said appeal is designated CAB No. D-1584; and

WHEREAS, CAB No. D-1584 involves claims by

Appellant for _____ in the amount of \$ _____;

and/or

The District for _____ in the amount of \$ _____; and

WHEREAS, the parties wish to resolve the appeal by alternative dispute resolution, specifically utilizing mediation; and

WHEREAS, the Board is authorized to resolve disputes by alternative dispute resolution under Board Rule 217;

NOW THEREFORE, the parties mutually stipulate and agree as follows—

1. Schedule. Within one week of the execution and Board approval of this agreement, the parties shall submit a joint proposed mediation schedule to the Board Neutral. This schedule shall include, at a minimum, the following items: (i) the deadlines for the submission of evidence and party statements to the Board Neutral; (ii) the dates for any preliminary meetings between the Board Neutral and the parties; and (iii) the duration, date(s), and location of the mediation itself.

2. [**Mandatory**] Board Neutral. The Board Neutral’s role will be to facilitate the parties’ settlement efforts. The Board Neutral may meet with the parties either jointly or individually (*ex parte*) to the extent necessary to foster a negotiated settlement of the dispute. The Board Neutral’s recommendations are not binding on the parties. The Board Neutral shall have the same common law immunity as judges and arbitrators from suit for damages or equitable relief and from compulsory process to testify or produce evidence based on or concerning any action, statement, or communication in or concerning the ADR proceeding. The parties understand that there is no attorney-client relationship between the Board Neutral and any party to this Agreement, and each party acknowledges that it will seek and rely on legal advice solely from its own counsel and not from the Board Neutral. The parties agree, on behalf of themselves and their counsel, that they

will not call or subpoena the Board Neutral (or any other current or former Board staff) in any legal action or administrative proceeding of any kind to produce any notes or documents related to the ADR proceeding, or to testify concerning any such notes or documents or their thoughts or impressions.

3. Exhibits. The parties, in cooperation with the Board Neutral, should agree on what exhibits will be presented in the mediation.

4. Transcript. No transcript or recording of the proceedings shall be prepared.

5. Agenda. During the mediation, the presentations of the parties will be informal, and the rules of evidence shall be waived. The Board Neutral may, nonetheless, guide the presentation of evidence.

6. Participants. Each party shall include among its representatives a principal with authority to settle the appeal.

7. Use of statements and documents. The admissibility, in any further proceedings before the Board, of statements made or documents used in connection with the ADR proceedings will be guided by District of Columbia Court of Appeals precedent. *See, e.g., Lively v. Flexible Packaging Ass'n*, 930 A.2d 984, 994 (D.C. 2007) (“[S]tatements and admissions made by a party during the course of settlement negotiations are not admissible at trial.”).

8. Fees and expenses. Each party will bear its own fees and expenses, including but not limited to attorney and agent fees and compensation for witnesses, incurred incidental to the ADR proceeding.

9. Good faith. All participants in the ADR proceeding agree to act in good faith in all aspects of the proceeding with the view of resolving the dispute.

10. Post-ADR. The Board will return any written materials created solely for use in the ADR to the creating party if requested by the party within 10 days of the conclusion of the ADR proceeding. The following documents will not be returned or destroyed: the parties’ ADR agreement; documents provided to the Board prior to its approval of the ADR agreement, including documents in the Appeal File and supplements thereto, and routine correspondence with the Board concerning the election and scheduling of the ADR; and any documents necessary for the Board’s recordkeeping purposes, such as any settlement agreement entered into which serves as a basis for later dismissal of the matter. Any other dispute resolution communications or documents remaining in the Board’s possession will be destroyed where the Board deems appropriate.

APPELLANT

DISTRICT OF COLUMBIA

By: _____

By: _____

Date: _____

Date: _____