

CARNES CONSTRUCTION COMPANY, INC.,)	AGBCA No. 99-158-2
)	
Appellant)	
)	
Representing the Appellant:)	
)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

February 28, 2000

Before WESTBROOK, Administrative Judge.

Opinion for the Board by Administrative Judge WESTBROOK.

This appeal arises out of Contract No. 50-435H-8-02 for the reconstruction of Burrell's Ford Road in the Tallulah Ranger District, Rabun County, Georgia. The contract was awarded on June 4, 1998, to Carnes Construction Company, Inc., of Gainesville, Georgia (Appellant) by the Forest Service, Chattahoochee-Oconee National Forest, U. S. Department of Agriculture (Government).

The Board has jurisdiction of this matter pursuant to the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613.

The contract contained an item for blading and shaping the existing road to be paid on an actual quantities (AQ). The estimated quantities were indicated to be 25 stations. Appellant bid this item at \$177.78 per station. During performance Appellant was directed to blade and shape the entire length of the road for a total of 190 stations, 165 stations more than the indication on the bid

schedule. Appellant made a claim for payment for the additional 165 stations at the bid price of \$177.78. In her January 29, 1999 decision, the Contracting Officer (CO) applied the Variations in Estimated Quantities clause to pay Appellant for those within a 15 percent variance (4 stations) at the unit price of \$177.78 and an additional 136 stations at \$1.89 per station for a total of \$968.16. The CO did not explain why her calculations addressed only 140 stations and not 165 stations. Subsequently, the Government's Answer acknowledged this discrepancy.

On April 20, 1999, the Board received Appellant's appeal of the CO's decision. Appellant elected the Expedited Procedure under Board Rule 12.2 requiring a decision within 120 days if possible. After pleadings were filed, the Board held a telephonic conference with the parties and in order to meet the target date for an expedited decision, set a deadline of June 25, 1999, for pre-trial submissions and a hearing date of July 14, 1999. The parties engaged in discovery. Prior to the date set for hearing, the parties informed the Board that the appeal had been settled. The Board has now received a copy of the Release and Settlement Agreement and a Dismissal of Appeal dated January 6, 2000.

DECISION

The parties having settled, the Board hereby dismisses this Rule 12.2 appeal with prejudice.

ANNE W. WESTBROOK
Administrative Judge

Issued at Washington, D.C.
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