

K & K LUMBER COMPANY,)	AGBCA No. 2001-106-1
)	
Appellant)	
)	
Representing the Appellant:)	
)	
David Sandoval)	
Balcomb & Green, P.C.)	
P. O. Drawer 790)	
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)	
Representing the Government:)	
)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

June 1, 2001

Before HOURY, VERGILIO, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge WESTBROOK.

This appeal arises out of Timber Sale Contract No. 022503, Primrose Sale, awarded April 14, 2000, to K & K Lumber Company of Silt, Colorado (Appellant), by the U. S. Department of Agriculture, Forest Service, Grand Mesa (Grand Mesa, Uncompahgre & Gunnison) National Forest, Colorado (Respondent). This appeal, received at the Board October 10, 2000, is from the Contracting Officer's (CO's) decision of September 7, 2000, denying Appellant's claim for \$28,500 for alleged errors in the calculation of pay item 304(01), Pit Run 4" Maximum, Compaction E, under the contract. The CO's decision was that Appellant was entitled to an adjustment in the amount of \$3,717.63. Appellant considered entitlement in that amount inadequate and appealed the decision to the Board.

The Board has jurisdiction of the appeal pursuant to the Contract Disputes Act of 1978 (CDA), 41 U.S.C. §§ 601-613.

By letter of October 11, 2000, the Board notified the parties of docketing, provided Appellant, then *pro se*, with a copy of Board rules and granted Appellant 30 days in which to file a Complaint in accordance with Board Rule 6. Appellant failed to file a Complaint within the prescribed period. On February 6, 2001, the Board issued an Order to Show Cause why the appeal should not be dismissed for failure to prosecute. Appellant promptly responded by a letter dated February 13, 2001. In a letter dated February 22, 2001, the Board informed the parties that the appeal would not be dismissed and the third paragraph of Appellant's letter would be treated as its Complaint. After being granted a requested extension of time, Respondent filed an Answer and Appeal File. The Board has now been informed that Appellant has retained counsel. Through counsel, Appellant has made a written request for a withdrawal of its appeal without prejudice. Respondent has interposed no objection.

DECISION

In accordance with Appellant's request, the appeal is hereby dismissed without prejudice. Dismissals without prejudice become dismissals with prejudice under Board Rule 30 if not reinstated within 3 years.

ANNE W. WESTBROOK
Administrative Judge

Concurring:

EDWARD HOURY
Administrative Judge

JOSEPH A. VERGILIO
Administrative Judge

Issued at Washington, D.C.
June 1, 2001