

**LONGHORN CONSTRUCTION
SERVICES, INC.,**

Appellant

Representing the Appellant:

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Representing the Government:

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AGBCA No. 2000-146-1

DECISION OF THE BOARD OF CONTRACT APPEALS

November 9, 2000

Before HOURY, VERGILIO, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge Westbrook.

This appeal arises out of the Sandia Crest Phase 1 Reconstruction Contract No. 50-83D5-7-1 in the Cibola National Forest in New Mexico. Appellant is Longhorn Construction Services, Inc. (Appellant or Longhorn), of Albuquerque, New Mexico. Respondent is the U. S. Department of Agriculture Forest Service (Respondent or FS).

The Board received Appellant's timely appeal of the Contracting Officer's (CO's) January 7, 2000 decision on March 29, 2000. The Board has jurisdiction pursuant to the Contract Disputes Act, 41 U.S.C. §§ 601-613. Appellant's notice of appeal described its claims 1 through 5 as (1) shifting observation deck; (2) additional compensation for rock excavation; (3) request for time extension; (4) request for extended job site overhead and interest and penalty on monies withheld eventually released; and (5) refute and demand payment of Government administrative cost. These descriptions

differed from those used in the CO's decision. Neither the notice of appeal nor the CO's decision specified the total amount of Appellant's claim.¹

Upon review, Appellant concluded that all claims except the fourth had been decided by the CO in the January 7, 2000 decision. The parties conferred and jointly requested an extension for filing the Complaint until the CO decided the remaining issue. Soon thereafter, however, the parties and their counsels met to discuss the issues and requested an additional extension. By July, the parties agreed that a negotiated settlement was a clear possibility but, because Government personnel with whom counsel needed to confer were engaged in responsibilities related to fire fighting efforts in the Southwest, the parties were unable to meet and negotiate at that time. An extension until November 1, 2000, was jointly requested by the parties and granted by the Board. Counsel for both parties have now informed the Board in writing that a settlement agreement has been reached and Appellant has withdrawn its appeal.

DECISION

The parties having settled the appeal, it is dismissed with prejudice.

ANNE W. WESTBROOK
Administrative Judge

Concurring:

EDWARD HOURY
Administrative Judge

JOSEPH A. VERGILIO
Administrative Judge

Issued at Washington, D.C.
November 9, 2000

¹ Appellant claimed \$7,129.03 plus 15 calendar days for claim item No. 1. For claim item No. 2, Appellant claimed \$15,353.09 and 18 days. Claim item No. 3 was a request for a time extension of 48 days not including the 18 days requested for claim item No. 2. The notice is silent regarding whether it includes the 15 days requested in the first claim. The first item claimed under claim No. 4 was for extended overhead in the amount of \$17,160 (66 days at \$260 per day), plus "applicable gross receipts tax." This item also includes "prompt payment interest and penalty on all claims monies found due Longhorn under this claim." The second item under claim No. 4 was for "prompt pay interest and penalty" on \$35,506.83 which the claim describes as monies withheld and eventually released. No specific amount or rate was claimed. Claim No. 5 was a demand for payment of \$7,469.48 (or \$7,311.98) which the CO had deducted (or intended to deduct) from the contract balance. Appellant's claim states that the first amount was cited in the decision and the latter in the worksheet attached to the decision. Due to the imprecision in the claim and the disposition of the appeal, the Board has not attempted to calculate a total claim amount.