



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED WITH PREJUDICE: August 9, 2007

CBCA 562, 563

AVINO CONSTRUCTION, INC.,

Appellant,

v.

DEPARTMENT OF AGRICULTURE,

Respondent.

Kevin M. Cox of Camardo Law Firm, P.C., Auburn, NY, counsel for Appellant.

Mark R. Simpson, Office of the General Counsel, Department of Agriculture, Atlanta, GA, counsel for Respondent.

POLLACK, Board Judge.

ORDER

These appeals arise out of separate final decisions, each on a separate contract between Avino Construction, Inc. and the Department of Agriculture, Forest Service (FS), Francis Marion & Sumter National Forests. Avino sought funds being withheld by the FS on the contracts, the FS contending that it was entitled to the sums due to forbearing in default proceedings and allowing Avino to continue work beyond the contract end date. The Board was initially advised by letter dated February 27, 2007, that the appellant was prepared to dismiss the case on the basis of a settlement with the FS. Issues relating to the verification of payment, however, arose and the Board held off on dismissal. On August 8, 2007, the Board was advised in a telephone conference that the settlement has been paid and the parties have agreed that the appeals be dismissed with prejudice.

Accordingly, the appeals are **DISMISSED WITH PREJUDICE**.

HOWARD A. POLLACK
Board Judge