

HORNE ENGINEERING SERVICES, INC.,)	AGBCA Nos. 2004-168-1,
)	2004-169-1,
Appellant)	2004-170-1
)	
Representing the Appellant:)	
)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

August 31, 2004

Before POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge VERGILIO.

On June 3, 2004, the Board received a notice of appeal from Horne Engineering Services, Inc., of Fairfax, Virginia (contractor). Underlying this dispute is its contract (construction of the wetlands creation project), No. 50-3K15-2-0200, Task Order No. 50-3K15-0201, issued by the Research, Education, and Economics mission area, of the U. S. Department of Agriculture (USDA), Agricultural Research Service, for work to be performed at the Plum Island Animal Disease Center in Greenport, New York. The respondent is the USDA (Government). The Board docketed this matter with the three above-referenced docket numbers, each referring to a discrete claim item denied by the contracting officer (\$266,795.25 for the amount of sludge the contractor maintains it processed and should be paid under the contract in addition to that paid by the Government; \$42,870 based upon an alleged changed site condition affecting the transfer of sludge; and \$519,128.14, which the contractor claims derives from an overage of soil handled under the contract).

The underlying decision of the contracting officer, dated March 8, 2004, is under the letterhead of the USDA, Research, Education, and Economics, Agricultural Research Service. The decision resolves what is described as a certified claim of the contractor originally submitted in December 2002, and revised in November 2003. In the decision, the contracting officer specifies that the contractor may appeal the decision to the "Agency Board of Contract Appeals (AGBCA)" or the U. S. Court of Federal Claims. Pursuant to statute, as of June 1, 2003, the assets and liabilities of the Plum Island Animal Disease Center of USDA, were transferred to the Department of Homeland Security. 6 U.S.C.A. § 190 (Supp. 2004). The Department of Homeland Security has assumed administration and management responsibilities for the Plum Island center, encompassing facilities and grounds, environmental management, and operations and maintenance.

Following an initial telephone conference held on June 24, 2004, the presiding judge and parties held subsequent telephone conferences. The Government maintains that the contracting officer's decision identifies the incorrect board available for appeal. The contracting officer now assigned to the contract has rescinded the decision underlying this dispute. A decision is to issue based upon a review of the underlying facts and law (should it be necessary, the new decision will identify the board at the Department of Transportation and the U. S. Court of Federal Claims as the forums available for appeal). Such action is said to be in accordance with the regulations of the Department of Homeland Security supplementing the Federal Acquisition Regulation (68 Fed. Reg. 67,867, 67,884 (2003), to be codified at 48 CFR 3033.211). As agreed upon during the telephone conferences, with the underlying decision rescinded, the contractor will not pursue its appeals of that decision, thereby making these appeals moot.

DECISION

The Board dismisses these appeals as moot.

JOSEPH A. VERGILIO

Administrative Judge

Concurring:

HOWARD A. POLLACK

Administrative Judge

ANNE W. WESTBROOK

Administrative Judge

Issued at Washington, D.C.

August 31, 2004