

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CONTRACT APPEALS BOARD

APPEAL OF:

HOOD'S INTERNATIONAL FOODS, INC.	)	
	)	CAB No. D-996
Under Contract No. 009-AA-89-0-3-W	)	

For the Appellant: Philip L. Kellogg, Esq., Kellogg, Williams & Lyons. For the District of Columbia Public Schools: Christopher Lipscombe, Esq.

Opinion by Administrative Judge Jonathan D. Zischkau, with Chief Administrative Judge Lorilyn E. Simkins and Administrative Judge Phyllis W. Jackson, concurring.

**OPINION**

The Appellant, Hood's International Foods, Inc., has moved for summary judgment on the issue of its entitlement to prejudgment interest against the District of Columbia Public Schools ("DCPS") on three previously unpaid invoices whose principal amount was \$244,805.39. After Appellant filed its complaint seeking payment of the principal amount and interest, but before DCPS filed an answer, DCPS paid Appellant the principal amount due. The parties agree that the interest penalty provisions of the Quick Payment Act did not apply to DCPS in this dispute which arose prior to the effective date of the Procurement Reform Amendment Act of 1996. Appellant claims that it is entitled to prejudgment interest at six percent pursuant to D.C. Code §§ 15-108 and 28-3302(a) under the authority of *District of Columbia v. Pierce Associates, Inc.*, 527 A.2d 306 (D.C. 1987). DCPS argues that the contract expressly prohibits the payment of interest on late payments. We conclude that Appellant is entitled to interest at four percent per annum pursuant to D.C. Code §§ 1-1188.6 and 28-3302(b).

**BACKGROUND**

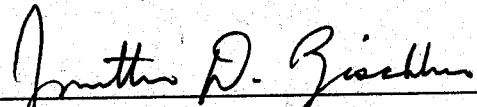
The relevant facts are not in dispute. Contract No. 009-AA-89-0-3-W was awarded to Appellant on August 17, 1993, for the delivery of breakfast and lunch items for the District's schools. Through several modifications, the contract period was extended through November 30, 1995. At issue in this case are three invoices totaling \$244,805.39 submitted by Appellant to DCPS in November 1995. (See Appellant's February 19, 1998 Supplement, Ex. 1). Under the payment provisions of the contract, Appellant was entitled to payment on its invoices on a monthly basis. (Contract, General Provisions ¶ 11 and Special Conditions, Part XVII, ¶ 6). The parties have stipulated that this means payment was to be made within 30 days of DCPS' receipt of a proper invoice.

Due to internal DCPS delays in obtaining funding and processing payment, the three invoices, among others, were not paid in a timely manner. On February 21, 1996, Appellant

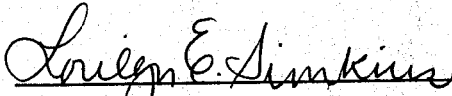
Interest on amounts found due to a contractor on claims shall be payable at a rate set in § 28-3302(b) applicable to judgments against the District government from the date the Director receives the claim until payment of the claim.

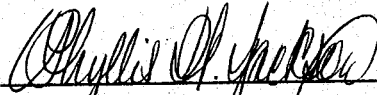
Whatever may be said of the contract language relied upon by DCPS, it cannot reasonably be read as prohibiting the Board from applying the interest remedy found at D.C. Code § 1-1188.6. There is no dispute that Appellant's invoices were due and payable within a month of DCPS receipt. From the record, it is clear that Appellant did not file its claim with the Superintendent until June 10, 1996, and that DCPS paid the principal amount on September 13, 1996. Accordingly, Appellant is entitled to interest at four percent per annum on the principal amount of \$244,805.39 from June 10, 1996 to September 13, 1996.

DATED: February 20, 1998

  
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JONATHAN D. ZISCHKAU  
Administrative Judge

CONCURRING:

  
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LORILYN E. SIMKINS  
Chief Administrative Judge

  
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PHYLLIS W. JACKSON  
Administrative Judge