



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED WITH PREJUDICE: May 14, 2008

CBCA 122

MARTIN CONSTRUCTION, INC.,

Appellant,

v.

DEPARTMENT OF AGRICULTURE,

Respondent.

John T. Gassmann, Valley City, ND, counsel for Appellant.

Margit Halvorson Williams, Office of the General Counsel, Department of Agriculture, St. Paul, MN, counsel for Respondent.

POLLACK, Board Judge.

ORDER

This appeal arises out of contract no. 50-6633-4-1, between Martin Construction, Inc. (Martin), and the United States Department of Agriculture, Natural Resources Conservation Service (NRCS). NRCS contracted with Martin for construction of a multi-purpose dam on the Square Butte Creek Watershed. In performing the work, Martin incurred additional costs to those it anticipated relating to excavation, particularly rock excavation, and submitted a claim. NRCS denied liability on the claim on the bases that the conditions encountered were represented in the contract, Martin did not encounter differing site conditions, compensation was under the variation in estimated quantities clause, and Martin failed to comply with notice provisions. Martin appealed NRCS's denial to the Department of Agriculture Board

of Contract Appeals on July 31, 2006, and the matter was docketed as AGBCA No. 2006-149-1. The appeal was transferred to the Civilian Board of Contract Appeals, upon the consolidation of the civilian agency boards of contract appeals. The matter was redocketed as CBCA 122. After engaging in extensive discovery, the parties agreed to participate in mediation. A three-day mediation was held in Bismarck, North Dakota, on April 8-10, 2008. At the time of mediation, the claim was \$1,050,135. Through mediation, the parties came to an agreement on compensation and entered into a Stipulation for Dismissal, globally settling all claims arising out of the contract. Under a cover letter dated April 30, 2008, the parties forwarded to the Board a Joint Motion to Dismiss, calling for dismissal of the appeal with prejudice.

Accordingly, this appeal is **DISMISSED WITH PREJUDICE**.

HOWARD A. POLLACK
Board Judge