

AHERN & ASSOCIATES, INC.,)	AGBCA No. 1999-174-1
)	
Appellant)	
)	
Representing the Appellant:)	
)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

August 3, 2000

Before HOURY, POLLACK, and VERGILIO, Administrative Judges.

Opinion for the Board by Administrative Judge POLLACK.

This appeal arises out of Contract No. 50-3D47-5-6 between the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), of Morgantown, West Virginia, and Ahern & Associates, Inc. (Appellant), of South Charleston, West Virginia. The contract was for construction of Cranberry Creek Channel Modification, including 2.1 miles of channel construction and utility relocation in the amount of \$20.5 million. The dispute concerns a claim for \$2,429,244.41 in costs for Ahern and \$1,489,966.58 in costs for Koker Drilling Company, a first tier subcontractor of Ahern. The claim centered on the nature and condition of rock at the site and on the drilling related to the installation of steel pilings. Essentially, Appellant contended that it encountered both Type I and Type II differing site conditions, as to the hardness of the rock.

On April 19, 1999, the Contracting Officer (CO) issued his decision denying Appellant's claim in its entirety. Appellant filed a timely appeal and the Board docketed the matter on July 19, 1999. The

Board has jurisdiction over this appeal pursuant to the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613.

Soon after docketing and under agreement of the parties, the appeal was stayed. Processing resumed in November 1999 and the parties then proceeded with discovery. On December 2, 1999 the Board issued an Order of Proof of Costs requiring an initial submission by Appellant by March 14, 2000 and a response by NRCS by May 14, 2000. The Board also set a date for exchange of expert reports.

On December 22, 1999, the Appellant filed a Motion for Leave to File Amended Complaint. The amendment essentially dealt with defining the station limits of the claim. NRCS contested the amendment and contended that the stations being addressed had not previously been included in the claim which was before the Board. Discussions were held between the Board and parties which resulted in the Appellant then filing a new claim addressing the disputed stations. A dispute then ensued over whether the new claim was sufficiently detailed to allow a CO's decision and finally additional correspondence was exchanged and more discussions held. These discussions resulted in the Board directing Appellant to file a cost breakdown for the new stations and directing NRCS to provide a decision upon receipt and review of Appellant's information. Appellant complied with the Board's direction and by letter of March 23, 2000, NRCS filed its decision denying the new claim.

By letter of April 13, 2000, the Board was notified by the parties that a settlement had been reached in the appeal. The settlement provided that once Appellant received the payment agreed to by the parties, Appellant's counsel would execute and file a Motion to Dismiss with Prejudice. By letter of May 1, 2000, counsel for the Appellant provided such a motion.

DECISION

The parties have settled the appeal and have agreed to dismiss the appeal with prejudice. Accordingly, the appeal is dismissed with prejudice.

HOWARD A. POLLACK

Administrative Judge

Concurring:

EDWARD HOURY

Administrative Judge

JOSEPH A. VERGILIO

Administrative Judge

Issued at Washington, D. C.

August 3, 2000

