

RENO TRUCKING & GENERAL)	AGBCA Nos. 2001-128-1
CONTRACTING,)	2001-129-1
)	2001-130-1
Appellant)	
)	
Representing the Appellant:)	
)	
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Starfield & Payne)	
P.O. Box 880)	
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)	
Appellant's Trustee in Bankruptcy:)	
)	
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Bankruptcy Trustee)	
P. O. Box 749)	
Mobile, Alabama 36601)	
)	
Representing the Government:)	
)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

February 25, 2002

Before POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge WESTBROOK.

These appeals arise out of Contract Nos. 50-4532-0-057, 50-4532-0-058 and 50-4532-0-059 between the U. S. Department of Agriculture, Natural Resources Conservation Service, Raleigh, North Carolina (Government), and Reno Trucking & General Contracting of Kimberly, Alabama (Appellant). They were received at the on Board February 5, 2001. Appellant appeals three

November 17, 2000 decisions of the Contracting Officer each terminating for default the contractor's right to proceed on one of the above-cited contracts.

The Board has jurisdiction of these timely appeals pursuant to the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613 (CDA).

The parties filed pleadings and an Appeal File and responded to the Board's Order regarding certain pre-trial submissions. During a September 19, 2001 telephonic conference convened to set a schedule for further proceedings, Appellant's counsel informed the Board that he had been unable to contact his client and had received a call from an attorney who stated he represented Appellant in a bankruptcy proceeding. Appellant's counsel indicated that if he continued to be unable to contact Appellant, he might withdraw as counsel. Government counsel informed the Board that the Government had been informed of the bankruptcy action and that she had written the trustee to inform the trustee of the pendency of these appeals and the potential of income to the bankrupt estate. Government counsel agreed to provide copies of this correspondence to Appellant's counsel and to the Board. Appellant's counsel was directed to inform the bankrupt's attorney and the trustee of this action and to report back to the Board. Government counsel thereafter provided the Board copies of the notification of bankruptcy and her letter to the Trustee in Bankruptcy.

On September 21, 2001, the Board received a letter from Appellant's counsel dated September 19, 2001, stating that Appellant had authorized him to request withdrawal of the appeals asking that the appeals be dismissed. The Board declined to dismiss the appeals without the concurrence of the Trustee in Bankruptcy. On December 18, 2001, the Board wrote the Trustee in Bankruptcy outlining the above sequence of events and asking her to inform the Board whether she intended to pursue the appeals on behalf of the bankrupt estate. The trustee was provided the Board's telephone number to set a conference if she wished to discuss the matter. She was also asked to inform the Board in writing if she wished to dismiss the appeals with prejudice. Finally, the Board stated that if it did not hear from the trustee within 30 days of receipt of the December 18, 2001 letter, an Order to Show Cause why the appeals should not be dismissed with prejudice would be issued. The December 18, 2001 letter was sent certified mail return receipt requested. The U. S. Postal Service return receipt indicates that the letter was delivered and signed for on or before December 28, 2001.

The Board has received a letter from the Trustee in Bankruptcy requesting dismissal with prejudice.

DECISION

Pursuant to the requests of both Appellant and the Trustee in Bankruptcy, these appeals are dismissed with prejudice.

ANNE W. WESTBROOK
Administrative Judge

Concurring:

HOWARD A. POLLACK
Administrative Judge

JOSEPH A. VERGILIO
Administrative Judge

Issued at Washington, D.C.
February 25, 2002