

C. R. KLEWIN,)	AGBCA No. 2001-107-1
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Appellant)	
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Representing the Appellant:)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

October 14, 2003

Before POLLACK, WESTBROOK, and VERGILIO, Administrative Judges.

Opinion for the Board by Administrative Judge POLLACK.

This appeal arises out of Contract No. 50-3K15-7-8224, between C. R. Klewin of New Haven, Connecticut, and the U. S. Department of Agriculture, Agricultural Research Service (ARS), Washington, D.C. The appeal arose out of construction at two related sites in Ft. Pierce, Florida, one designated the "farm site" and the other the "laboratory site." The appeal, in excess of 3.8 million dollars, dealt with approximately 35 separate specifications or performance items, as well as a delay claim on both portions of the project.

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

Appellant initially appealed the matter in October 2000. Due to the extensive size of the appeal file, over 20,000 documents and the time needed by Appellant to prepare a supplement, the appeal files

were not completed until the early summer of 2001. Thereafter, the parties requested time to engage in discussions, so as to further exchange information and attempt to find a means to settlement.

The parties met in December 2001 and, as a result the parties engaged in exchanging additional information. The Board continued to monitor matters and at the request of the parties did not at that time interject itself into the discussions. In September 2002, ARS changed counsel due to a reassignment of the initial attorney.

On September 12, 2002, the Board conducted a telephone conference with the parties. At that point, despite the exchange of information and discussions between the parties, no settlement had been reached. Accordingly, the Board advised the parties that given the number of issues and size of the record, the Board would hold what the Board designated as a pretrial/settlement conference. The Board advised the parties that they should expect to spend approximately 2 days reviewing the specific claims with the Board and at that time the Board would attempt to have the parties either resolve or at least narrow various issues. The Board also advised the parties that it would engage in neutral evaluation, but would not separately meet with either party, so as to avoid any ex parte contact which could cause the presiding judge to not move forward if the case failed to settle. No specific date was set so as to give the new Government counsel time to familiarize herself with the appeal and with the various issues. On April 3 and 4, 2003, the Board conducted the conference in Washington, D.C. During that conference the claims were discussed and neutral evaluation was provided. No settlement was reached at that time, although the parties agreed to reconvene and attempt to see if they could reach resolution.

By letter dated May 20, 2003, the Board was notified that the parties had conducted fruitful discussions for the purposes of settling the outstanding issues. The parties anticipated that discussions would take an additional week. Thereafter, the parties reached a settlement on all issues and on July 16, 2003, Appellant, through counsel, provided a Motion to Dismiss. The motion requested that the appeal be dismissed with prejudice, noting that the claims had been fully resolved by the parties.

DECISION

The appeal is dismissed, with prejudice.

HOWARD A. POLLACK
Administrative Judge

Concurring:

JOSEPH A. VERGILIO
Administrative Judge

ANNE W. WESTBROOK
Administrative Judge

Issued at Washington, D.C.
October 14, 2003