

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
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Parker Excavating, Inc. ) ASBCA No. 54637  
 )  
Under Contract No. DAKF06-01-D-0009 )

APPEARANCE FOR THE APPELLANT: Mr. Lester A. Parker  
President

APPEARANCES FOR THE GOVERNMENT: COL Samuel J. Rob, JA  
Chief Trial Attorney  
CPT Eugene Y. Kim, JA  
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE TODD

This appeal arises from the denial of the contractor's differing site conditions claim for damage to its equipment caused by encountering obstacles while drilling to install underground electrical conduit. The government maintains that the appeal should be denied because appellant has failed to establish what the obstructions were and it did not provide the required notification of the conditions. Only entitlement is before us for decision.

FINDINGS OF FACT

1. On 24 September 2001, the Directorate of Contracting (DOC) at Fort Carson, Colorado awarded Contract No. DAKF06-01-D-0009 to appellant Parker Excavating, Inc., a Native American-owned company, for the burying of electrical cables at Fort Carson. The contract was a Section 8(a) set-aside through the Small Business Administration for minority companies. The contract was a requirements contract, with a stated minimum of \$300,000 and a stated maximum of \$3,000,000. (R4, tab 1) Delivery Order No. 0002, dated 25 July 2002, provided for Phase III of the underground electrical work. The estimated cost for work scheduled to be performed 25 July 2002 through 31 December 2002, was \$2,158,946.73. (R4, tab 5)

2. The contractually referenced drawings were changed during negotiation of the delivery order and not issued as final contract drawings at the time of the parties' agreement. They did not show any buried old buildings or foundations and did not include any notes indicating a potential of such site conditions. (R4, tab 1 at 01010-2; supp. R4, tab 91; tr. 1/35, 60)

3. The contract incorporated by reference standard FAR clause 52.236-2, DIFFERING SITE CONDITIONS (APR 1984) (R4, tab 1 at 8).

4. After the contract was signed, Mr. Lester Parker, appellant's president, negotiated the Phase III work with Mr. Robert D. Mills, the contracting officer in the construction division in the DOC at Fort Carson. As a result of design problems, the negotiations took an unusually long time to determine the scope of work and reach agreement on unit prices. (Tr. 1/25-26, 2/72) The work involved placing the existing overhead electrical cables underground into 4-6 inch conduits, installing new switches and transformers along a five-mile route from the O'Connell Substation down to Butts Airfield Road, testing, switching the cables over, and energizing the electrical circuit. (R4, tab 1 at 01010-1; tr. 2/75, 114) In the absence of final drawings, it was necessary to walk the route in an effort to validate the design by measuring conduit and checking alignments that would ensure proper operation of the electrical cabling (tr. 1/27, 57). Valves, storm sewers, and manholes were observed during the walk throughs, but there were no maps as to where the utilities ran, and no details were included on drawings regarding the location of the utilities (tr. 1/84).

5. Appellant's proposed price, taking into consideration its previous work at Fort Carson and the possibility of hitting boulders, sandstone, or other hard rock conditions in the Fort Carson soil, was \$35.00 per linear foot for directional boring. Appellant had no reason to expect hitting old foundations. The government negotiated appellant's price down to get it to the government's estimate for this contract line item (clin). (Ex. A-88; tr. 1/28, 30-31, 46-49) Appellant's understanding was that it should keep track of any problems with the directional boring, and additional costs, if any, could be discussed and worked out at the end of the project through a change order or the claims process (tr. 1/30, 32, 52-53, 66, 72, 79, 116, 2/11).

6. Modification No. P00003, dated 22 March 2002, incorporated a negotiated price list that included the following regarding boring:

Boring price:

The following clin number will be established:

CLIN #930 Direction bore to include: mud, labor, and pulling back of any bore up to 6" in any site condition, and it also includes all dig permit work and painting of the lines.  
\$25/ft.

(R4, tab 2 at 3)

7. On 5 June 2002, a meeting was held to determine the unit prices for all the contract line items. There was discussion and agreement on the following item number 929:

Directional bore any length. Direction bore to include: mud, labor and pulling back of any bore up to 6" in any site condition	LF	\$25.00
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(R4, tab 3 at 6)

8. Appellant received 100% design drawings on 28 August 2002 (supp. R4, tab 91). On or about 30 September 2002, appellant started work (R4, tab 9; ex. G-2). Appellant used a Vermeer D24x40A NAVIGATOR<sup>®</sup> horizontal directional drill that was dedicated to the contract work. In May 2001, it was new and had a low 97 hours of operation before the start of the project. Operating guidelines in the Vermeer Operator's Manual specify how the drill was to be used. (R4, tabs 48, 54; ex. A-1; tr. 1/91, 2/49, 57)

9. Appellant attempted to take photographs of the conditions at the site before starting work, but was stopped by the security police. On 8 October 2002, appellant sent a letter to Mr. Mills requesting permission to photograph the construction site to have an adequate definition of the existing conditions in case there were any areas of contention or claims during and at the end of the contract. (R4, tab 9; tr. 1/132-33)

10. The government wanted improved communication with the contractor and instructed appellant at a meeting on 16 October 2002 to notify the Directorate of Public Works (DPW) and DOC representatives by telephone when problems arose. Mr. Virgil Redding, the government inspector, and Mr. Fred Buckner in the DPW, and Mr. Larry Anderson and Mr. Mills in the DOC were listed in minutes of the meeting with their telephone numbers. Mr. Mills wanted appellant to deal with Mr. Anderson, the contract administrator, and considered that notice to him was notice to the contracting officer. Mr. Anderson died during the summer of 2004. Mr. Lester Parker told Mr. Gregory Parker, his son who worked as project superintendent, to avoid being confrontational with the government representatives and not write letters that the government had indicated they did not want to receive. (Ex. A-84; tr. 1/33, 66, 75-79, 89, 117) Government representatives on site and in field meetings gave verbal orders to appellant when the layout of the circuits needed to be changed from what was indicated on the drawings because of the location of utilities or underground obstructions (tr. 1/71, 86-87, 105, 108-09).

11. Mr. Parker\* explained why the drilling was more difficult and time consuming and how damage to the equipment was caused. He described generally that in directional drilling, coordinates are set for the bore, and there is a strike out when an unknown and unseen obstruction can sometimes be hit. Damage occurs more frequently in pulling back the conduit when an obstacle is hit or there is an undue amount of stress on the pipe if it goes through a large amount of debris. This stress causes components to wear out more frequently than normal. It is necessary to pull back quickly so that the pipe does not freeze up and affect the bore hole which would then require reboring. If the starter rod broke off, it was necessary to dig up the area to retrieve the head, but on other occasions, a broken part might be left and the actual obstruction which caused the damage would remain unknown. When appellant dug up areas to retrieve equipment components, it found asphalt, concrete, rebar, and other debris. Mr. Parker described the instances of encountering obstacles while drilling and the role of the government representatives called to the site to give direction that was needed for changing aspects of the drawings. Appellant made Messrs. Redding, Anderson, and Mills aware of the status of the contract work during these site visits, including the obstacles encountered in its directional drilling. (Tr. 1/63-65, 73-75, 98, 112)

12. Appellant documented 19 separate incidences of problems drilling to install the conduit that are designated by date and the letters A through S (R4, tabs 48, 52; supp. R4, tab 90; ex. G-1; tr. 1/58). Appellant incurred increased equipment costs to repair and replace parts of its drilling equipment at the 19 different locations during the period 1 October 2002 through 26 March 2003 (supp. R4, tab 95). Appellant's time sheets detail the instances of equipment damage in the notes included for the foreman's diary (R4, tab 48). Appellant's daily superintendent reports show the date, personnel on site, equipment on site, and work done. They serve to corroborate that appellant's equipment was damaged in some of the 19 instances. They generally do not discuss the cause of the problem encountered. (Exs. A-59 through -77)

13. Appellant's documentation of the instances, made contemporaneously, evidences that demolition debris encountered at specific locations on specific dates caused damage or required the purchase of new parts for the Vermeer drilling machine. In most instances appellant knew the nature of the debris, but in some cases the equipment repairs that were made were attributable to unusual wear and tear. We find this damage was also caused by the demolition debris. Mr. Parker was on site on a daily basis. He was present when the majority of the problems occurred and was called to the site for the others to determine how appellant should proceed, to authorize the purchase of replacement parts, and to work on a resolution with government representatives. He recalled what happened and described the obstructions encountered to the extent they were dug up and could be identified. (Tr. 1/64-65, 72-73, 75-76, 81-86, 89-93, 95-101,

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\* When not otherwise indicated, Mr. Parker is hereinafter Mr. Gregory Parker.

103-16, 131, 203, 2/32-33) Mr. Edward Murphy, appellant's foreman, reviewed the events discussed in appellant's time sheets and corroborated what happened (tr. 1/147-70). Mr. Todd Neirmeyer, a Vermeer salesman, made frequent trips to Fort Carson with parts representatives because of the "unusual" number of problems that arose (tr. 2/59).

14. Mr. Parker considered the possibility that operation of the directional drill was causing the problems in boring. He and Mr. Murphy operated the machine, and the operator was replaced by a new hire. All the operators had the same problems. Appellant's boring crew were trained and experienced. No operator error caused damage to appellant's equipment. (Tr. 1/157-58, 175, 198-202, 2/43)

15. Mr. Lester Parker called Mr. Mills to notify him of the problems being encountered in the directional drilling in a phone call that Mr. Mills did not recall (tr. 1/29, 2/96). Messrs. Parker and Murphy, who were working on site, had a standing procedure of calling DPW when a problem arose and letting Mr. Anderson know that they had. If Mr. Anderson was not available, they would contact Mr. Mills. Sometimes all of them came out to the site as the government was frequently needed to resolve problems. (Tr. 1/78, 95-96, 139, 2/12) There were also numerous field meetings and meetings at the DOC when appellant discussed the directional drilling problems with the government representatives (tr. 1/72, 77, 96, 2/7, 18). Mr. Redding was usually on site daily, but recalled that he was aware of appellant's equipment damage from underground obstacles from site visits only on 11 December 2002 and 26 March 2003, which were the dates of two of the 19 incidents in appellant's claim (items # I and S, respectively) (R4, tab 45; tr. 2/115, 118-21). Mr. Mills was aware that appellant was hitting asphalt, concrete, rebar, and debris in its drilling and commented to Mr. Parker at one of the sites of equipment damage, "this could be someplace where they demoed an old building or something and buried that stuff" (tr. 1/102). He advised appellant to keep track of the occurrences (tr. 1/51-52).

16. Written notice of some of the problems was provided to the government in the quality control reports (QCRs) prepared by Mr. Audie Barrett, appellant's quality control representative who worked with the DPW inspectors, and his successor (R4, tabs 11 through 21, 23, 27 through 31, 33 through 42, 46; tr. 1/32-33, 121, 183). Mr. Redding received the QCRs, but only glanced at them and missed the references to damage to appellant's boring equipment. He did not discuss drilling problems, equipment damage, and differing site conditions with Mr. Barrett. (Tr. 2/114-15, 121-22, 125, 129)

17. By letter dated 12 December 2002, to Mr. Mills, appellant requested a meeting to discuss directional drilling problems "hitting demo debris" (R4, tab 22). Appellant wanted to renegotiate the unit price due to the "differing site condition of demo debris" (*id.*). The letter mentioned the photographs of damaged equipment and debris dug up

that were taken by Mr. Anderson. Mr. Mills has acknowledged receipt of this written notice. He requested a statement of the cost of damage to appellant's equipment as of that time and an explanation of the problems from the manufacturer of the drilling equipment. (R4, tab 24; tr. 2/88)

18. By letter dated 13 December 2002, to Mr. Mills, appellant stated that \$37,500 had been spent as a result of the damage to its equipment, not including labor or loss of production. A meeting was requested as soon as possible to renegotiate the price for directional drilling. (R4, tab 24) Appellant enclosed a letter from Vermeer which stated:

Drilling items such as drill rod, starter rods, drill heads, duck bills, collars, and reamers, are manufactured to be used successfully in ground conditions such as . . . standard soil conditions, soft shale, caliche, hard packed clay, hardpan, and softer rock formations . . . [A]ny foreign material such as pavement, concrete slabs, foundations, and steel, will Compromise [sic] the integrity of these components causing extreme wear and breakage.

(*Id.* at 2)

19. Messrs. Mills and Redding considered that they generally received neither written nor verbal notice of differing site conditions from appellant (tr. 2/79, 82, 121). In using this terminology of differing site conditions or unforeseen site conditions, they attempted to distinguish information received from appellant about "debris" and their being aware from being on site of drilling problems and damage to equipment (tr. 1/102-03).

20. On 18 December 2002, Mr. Anderson sent a memorandum to DPW, attention Mr. Redding, requesting comments and recommendations on appellant's request for reimbursement of excess expenses associated with "boring through debris causing damage to boring heads and pipe" (R4, tab 25). The memorandum enclosed the contractor's documentation and requested a response as soon as possible (*id.*). DOC relied on the expertise of DPW, particularly Mr. Redding on this contract, in technical matters (tr. 2/107-08). Mr. Redding's response, dated 2 January 2003, noted that no official request for reimbursement had been received from appellant. DPW needed more information concerning the damage, the date of damage, and how the damage occurred. (R4, tab 26) Mr. Redding remembered thinking then that the claim was "bogus" (tr. 2/126-27).

21. Messrs. Parker and Barrett attended a meeting on 13 January 2003 with government representatives, including Messrs. Mills and Anderson, at which the

damaged equipment was discussed. Minutes of the meeting refer to appellant's letter stating the amount of damage to be reimbursed that Mr. Anderson had sent to DPW. The minutes stated that if no answer was received from DPW soon, Mr. Mills would press for a reply, and if there was no answer, Mr. Mills would sign off on the request. (R4, tab 29; tr. 2/107-08)

22. On 28 January 2003, appellant updated its request for reimbursement letter to state that extra cost due to "demo debris" had increased to \$57,002.38 (R4, tab 32). Mr. Parker's letter stated that the contracting office had been notified immediately, and Mr. Anderson had taken pictures on 12 December 2002. Appellant noted that it did not have additional pictures because no response had been received to its request for authorization to use a camera on site (finding 9, *supra*). Mr. Parker stated his view that "equipment costs on the drill can be produced to show that [the damage] was not from abuse, but from demo debris" (R4, tab 32; tr. 1/101).

23. Approximately 1 February 2003, appellant hired Mr. Ron Deppen as superintendent. Mr. Parker was relieved of his responsibilities because of conflicts with Mr. Redding and what was considered his confrontational style. (Tr. 1/78, 109, 142, 2/5-6, 25, 35) Mr. Deppen had responsibility to document minutes of meetings and requests for information (RFIs) to stop the practice of receiving verbal directions in the field (tr. 2/7-9). When problems arose, Mr. Parker, who continued as general project manager for another contract at Fort Carson, was contacted as were DPW and DOC representatives pursuant to appellant's standard procedure (tr. 2/12, 33). Mr. Deppen worked for appellant for approximately three months during which time Mr. Mills became upset with the volume of letters he wrote to get issues resolved (tr. 2/16, 250). Appellant laid off Mr. Deppen, and Mr. Parker returned to function as superintendent (tr. 1/142, 2/22).

24. On 5 March 2003, a meeting was held with DOC and DPW representatives to discuss appellant's open items list. Mr. Deppen recorded the discussions in internal meeting notes. (Ex. A-87; tr. 2/10) Appellant had not received a response to its letter regarding boring damage. Although DPW had replied to DOC, Mr. Mills had not received the response and asked that DPW resend it to him. (Ex. A-87)

25. At a meeting on 13 March 2003, the boring damage was discussed again with Messrs. Mills and Anderson. According to Mr. Deppen's notes, Mr. Mills had DPW's response, but had not reviewed it. (Ex. A-88) Mr. Mills anticipated that he would not be able to issue a final decision because of a lack of information from both appellant and the government. Mr. Deppen wrote that the debris encountered was an unknown site condition that should have been the subject of government notice to the contractor. It appeared to him that after demolition had taken place in the area in the past, the demo company had been permitted to exceed the maximum debris allowable. He also noted

that the bore price in the contract was less than the industry average and did not include a “damage risk percentage” to allow for differing site conditions (*id.* at 2; tr. 2/10-11). Mr. Mills agreed to this characterization of the directional drilling unit price in the contract (*id.*; tr. 2/93-94). Mr. Mills’ minutes of the same meeting, a copy of which was forwarded to appellant, explained that the DPW response “fell through the crack” in his office, and he would take action on appellant’s request in writing (R4, tab 89 at 2).

26. The contracting officer’s response by email, dated 17 March 2003, to appellant’s request for reimbursement for boring damage was that he did not have sufficient information to make a determination as to whether the claim was justified or not. Although appellant’s letter referred only to demolition debris, Mr. Mills described the contractor as having stated that the excessive damage was due to “large rocks, cement foundation pieces in the ground, etc.” (R4, tab 43) Appellant was advised to furnish “some type of backup documentation to support the claim” (*id.*).

27. On 14 November 2003, appellant forwarded its certified claim for charges pertaining to the boring damage due to unforeseen site conditions to DOC. The claim included copies of time sheets and invoices. The contracting officer received the claim on the same date. On 19 November 2003, he returned it to appellant for clarifications. He requested inclusion of a brief description of the occurrences. (R4, tab 47; tr. 1/135)

28. On 17 December 2003, Mr. Parker resubmitted the claim for \$74,469.14 to the contracting officer with brief descriptions of the occurrences taken from his diary and other contemporaneous notes and more complete supporting documentation that included copies of not only time sheets and invoices, but also correspondence and government photographs. Appellant also provided information concerning its Vermeer directional drill. (R4, tab 48; tr. 1/133-36)

29. On 6 January 2004, Mr. Anderson forwarded appellant’s claim to DPW, attention Mr. Redding, with a request for a written review and justification (R4, tab 49). Mr. Redding requested additional information from DOC concerning the boring machine to assess the pressure gauges and safety equipment on the Vermeer equipment. He expressed his view that when an obstruction is encountered, the machine operator will choose to increase pressure to try to move the object, change direction to go around the object, or stop and dig up the obstruction, but it would be irresponsible to increase the pressure until there is damage to the drill rod or head. He also expressed the view to DOC that the contract provided for amortization of the equipment during the life of the contract, including expected wear and tear, consumables, and possibly accidental damage without provision for additional compensation for use of the equipment. (R4, tab 50)

30. Mr. Redding’s review of appellant’s claim, dated 26 February 2004, listed each of the 19 incidents of differing site conditions, the date, the damage claimed,

whether the incident was reported in the daily QCR, and provisions of the operating guidelines of the operator's manual considered relevant to the alleged cause of the damage. Mr. Redding concluded that the claim should be denied due to a failure to report most of the 19 incidents to the government and his opinion that damage was attributable to operator error. The boring machine was equipped with three pressure gauges intended to prevent the type of incidents that the contractor alleged. Mr. Redding did not find the photographs persuasive and noted that two other contractors doing similar work in 75 percent of the same area involved in the claim were able to complete their work without equipment damage. (R4, tab 52)

31. The contracting officer's final decision, dated 23 April 2004, denied appellant's claim in its entirety for failure of the contractor to provide proper notice to the government as required by the Differing Site Conditions clause in the contract. The decision also noted appellant's failure to document its proper use of the equipment. (R4, tab 53; tr. 2/80-81)

32. Mr. Robert Meadows, president of Global Underground Corporation (GUC), one of appellant's competitors, testified at the hearing about comparable excavation activities at Fort Carson over the previous five years. He found the soil was medium density clay, clay sand, and occasionally river rock which were all favorable to directional drilling. GUC experienced the loss of some 10 to 12 drill stems that he considered damage caused by the neglect of operators not being attentive to pressure gauges, and no claim for increased costs was filed. The areas GUC excavated did not parallel the same path as the contract work, but were only in the vicinity of some of the crossings of that path. According to Mr. Meadows, when an obstruction is hit drilling, the operator will feel it in the handles of the machine, but at times there is damage before the machinery can be stopped. (Tr. 2/131, 134, 136-38, 140, 142-43)

### DECISION

Appellant argues that it is entitled to compensation for damage to its boring equipment that occurred on 19 separate occasions when it encountered unforeseen unknown structures, abandoned foundations, and abandoned roadways that the government failed to identify in the contract documents. Appellant has asserted that demolition debris rather than hard rock conditions caused the increased costs incurred. According to appellant, it reduced its boring price during contract negotiations in reliance on representations made by the contracting officer that additional cost from the risk of unforeseen conditions would be compensated by issuance of a contract modification at the end of the contract. Appellant maintains that it provided notice of the conditions to the contracting officer in letters, site visits, and QCRs (app. br. at 15).

The government argues that appellant cannot recover for differing site conditions because it had prior knowledge of hard, rocky subsurface conditions at Fort Carson and

has failed to prove that the conditions encountered went beyond the anticipated rocky soil. The government asserts that appellant failed to provide written notification of the conditions required by the Differing Site Conditions clause and cannot recover for this further reason.

A Type II differing site condition requires proof of the recognized and usual physical conditions at the work site, proof of the actual physical conditions, proof that the conditions differed from the known and the usual, and proof that the different conditions caused an increase in contract performance. *Costello Industries, Inc.*, ASBCA No. 49125, 00-2 BCA ¶ 31,098 at 153,585.

Appellant had no reason to anticipate demolition debris in the area of Fort Carson where the directional boring was done. The usual soil conditions were clay and occasional river rock with only a possibility of hard rock near the mountains. Asphalt, concrete, rebar, and debris that were encountered in underground drilling differed materially from the soil conditions in the area. They were conditions unknown and unanticipated by experienced contractors. The government has argued that the cause of the damage to appellant's equipment was operator error (gov't br. at 39). Although appellant suspected that the damage was being caused by errors committed by its drill operator, it tested its suspicion by changing operators and found there was a consistency in the problems that arose for all operators (finding 14). Mr. Meadows' testimony that the type of equipment damage that appellant incurred can be attributed to neglect by the equipment operator was not persuasive that appellant was negligent in its performance of the contract (finding 32). Appellant has established that demolition debris caused the equipment damage requiring replacement and repair of component parts of its directional drill that increased its costs of contract performance.

The Differing Site Conditions clause in the contract requires that the contractor promptly and before the conditions are disturbed give written notice to the contracting officer of the conditions encountered. FAR 52.236-2. The purpose of the written notice requirements imposed by the FAR is "to allow the Government an opportunity to investigate and to exercise some control over the amount of cost and effort expended in resolving the problem." *Central Mechanical Construction*, ASBCA No. 29431 *et al.*, 85-2 BCA ¶ 18,061 at 90,658. The contractor must promptly notify the government, but it is not necessary or reasonable for the contractor to provide repeated written notice to the contracting officer every time the same material is encountered as the work progresses. *See Engineering Technology Consultants, S.A.*, ASBCA No. 43376, 92-3 BCA ¶ 25,100 at 125,139, *modified on other grounds on reconsid.*, 93-1 BCA ¶ 25,371. The notice requirement is waived if the government has actual or constructive notice of the conditions encountered and is thus not prejudiced by the lack of notice from the contractor. *C & L Construction Company, Inc.*, ASBCA Nos. 22993, 23040, 81-1 BCA ¶ 14,943 at 73,962-63, *aff'd on reconsid.*, 81-2 BCA ¶ 15,373, *mot. for new trial denied*,

83-2 BCA ¶ 16,785. The written notice requirements are not construed hypertechnically to deny legitimate contractor claims when the government was otherwise aware of the operative facts. *Grumman Aerospace Corporation*, ASBCA No. 46834 *et al.*, 03-1 BCA ¶ 32,203 at 159,185, *modified on other grounds on reconsid.*, 03-2 BCA ¶ 32,289. Some of the daily QCRs put the government on notice of the conditions encountered, and the contracting officer had written notice of the conditions as of 12 December 2002 (findings 16, 17). In addition, we have found that the government was aware of the conditions from meetings and site visits (findings 11, 15). The burden is on the government to establish that it was prejudiced by absence of the required notice. *Grumman Aerospace Corporation*, *supra*. Here the government has made no showing of prejudice from the passage of time or an inability to minimize extra costs resulting from any delay in receiving prompt written notice.

We have found that appellant established that the soil conditions encountered involved asphalt, abandoned foundations, concrete, rebar, and debris and were unknown, unforeseen, and unusual. These conditions were other than rocky soil which might have been anticipated. For those instances where appellant did not see what caused the damage, we are persuaded that the damage was attributable to demolition debris and not hard rock (finding 13). Lack of prompt written notice is not a bar to recovery. We have thus concluded that the conditions constitute Type II differing site conditions, and appellant is entitled to recovery of its resulting increased costs.

For these reasons, the appeal is sustained. Appellant is entitled to interest in accordance with the Contract Disputes Act, 41 U.S.C. § 611 from 14 November 2003, the date the government received appellant's certified claim. The matter is remanded to the parties for the negotiation of quantum.

Dated: 28 February 2006

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LISA ANDERSON TODD  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur

I concur

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MARK N. STEMLER  
Administrative Judge  
Acting Chairman  
Armed Services Board  
of Contract Appeals

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EUNICE W. THOMAS  
Administrative Judge  
Vice Chairman  
Armed Services Board  
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 54637, Appeal of Parker Excavating, Inc., rendered in conformance with the Board's Charter.

Dated:

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CATHERINE A. STANTON  
Recorder, Armed Services  
Board of Contract Appeals