

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
 )  
Laguna Construction Company, Inc. ) ASBCA No. 59108  
 )  
Under Contract No. FA8903-06-D-8515 )

APPEARANCE FOR THE APPELLANT: Michael F. Menicucci, Esq.  
Calvert & Menicucci  
Albuquerque, NM

APPEARANCES FOR THE GOVERNMENT: Lt Col James H. Kennedy III, USAF  
Air Force Chief Trial Attorney  
Maj Michael G. King, USAF  
Capt Adam N. Olsen, USAF  
Trial Attorneys

OPINION BY ADMINISTRATIVE JUDGE DELMAN ON CROSS-MOTIONS  
FOR PARTIAL SUMMARY JUDGMENT

The parties have filed cross-motions for partial summary judgment in this appeal. We have jurisdiction under the Contract Disputes Act, 41 U.S.C. §§ 7101-7109.

This appeal involves the government’s revocation of acceptance of the contract work – the construction of a taxiway at Randolph Air Force Base, Texas – due to pavement cracking in the taxiway (Failure I), and also involves the damages flowing to the parties resulting from the re-work, including damages arising from pavement cracking in the work that was re-performed (Failure II). Our review of the record reveals a number of disputed material facts, including, but not limited to the following:

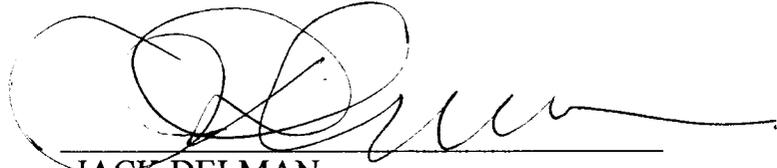
1. The cause of taxiway pavement cracking in Failure I;
2. The scope of Failure I, and whether the government’s direction to appellant to re-perform all the work was supported by the failures observed and the contract;
3. The cause of taxiway pavement cracking in Failure II.

It is well settled that in order to obtain summary judgment a party must show that there are no material factual disputes of record, and it is entitled to judgment as a matter of law. *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1390 (Fed. Cir. 1987). Neither party has met its burden here.

CONCLUSION

The parties' cross-motions for partial summary judgment are denied.

Dated: 17 March 2015



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JACK DELMAN  
Administrative Judge  
Armed Services Board  
of Contract Appeals

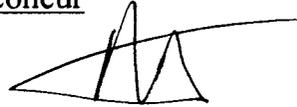
I concur



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

I concur



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RICHARD SHACKLEFORD  
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. 59108, Appeal of Laguna Construction Company, Inc., rendered in conformance with the Board's Charter.

Dated:

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JEFFREY D. GARDIN  
Recorder, Armed Services  
Board of Contract Appeals