

Soil Disposal/Navy Construction Contract: U.S. Court of Federal Claims Addresses Request for Equitable Adjustment



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The United States Court of Federal Claims (“Court”) addressed in an October 31st opinion a contractor’s request for equitable adjustment related to construction of a runway for the United States Navy (“Navy”). See *Coffman Specialties, Inc. v. The United States*, 2019 WL 5608865.

Plaintiff had requested recovery of additional costs associated with the disposal of excess soil.

Coffman Specialties, Inc. (“Plaintiff”) entered into a contract with the Navy which required:

. . . to, among other things, repair Runway 12/30 including full depth runway reconstruction, repair of asphalt shoulders, demolition, and re-stripping of pavement markings, along with pavement repairs. Plaintiff was to complete the work within 545 days after the Notice of Award, or by March 27, 2017

Plaintiff alleged that it was entitled to recover additional costs associated with the disposal of excess soil. The excess costs were alleged to be incurred because the Navy “improperly imposed excessive restrictions on Plaintiff with regard to such disposal.” The restrictions were alleged to be contrary to the terms of the contract.

Plaintiff alleged reliance on contract terms that were based on hauling excess soil to a commercial farm. The Navy objected to this plan because it was not licensed or permitted.

The Plaintiff informed the Navy that it considered the objection to be a “constructive change to the contract.”

The Navy was subsequently notified that Plaintiff would comply under protest with the directive that the excess soil be hauled to either a licensed landfill facility or a commercial recycling facility. The excess soil was taken to a commercial landfill.

The landfill operator deemed the soil contaminated even though the Plaintiff contended the testing standards were more stringent than required by local, state, or federal regulations. The testing data was stated to have indicated that the soil was contaminated with heavy metals and petroleum hydrocarbons. As a result, disposal costs were increased by an estimated \$17.00 to \$19.00 per ton. Plaintiff estimated that increased fees were approximately \$1,415,800 over what it would have paid to have the material hauled to the commercial farm.

The Plaintiff filed a Request for Equitable Adjustment in an effort to recover the previously referenced sum based on an allegation there was a constructive change in the contract. The Navy denied the request on the basis that:

Republic Services had not charged additional sums since they considered the soil to be contaminated.

A subsequently submitted Contract Disputes Act Claim was also denied.

Plaintiff filed a Complaint before the Court in which the Navy moved for partial dismissal of the first cause of action.

The Court notes in reviewing the Motion to Dismiss that both the Plaintiff and the Navy disagree as to which parts of the contract are relevant to determine Plaintiff's rights under the contract and whether the terms of the contract ultimately resolve their dispute. It notes that neither party provided the Court a complete copy of the contract.

The Court rejects the Navy's argument that the Court has before it everything needed to determine whether the Plaintiff has stated a claim for relief. It states that "the provisions of a contract must be read as a whole" . . . Further referenced is the parties' inability to agree on either the universe of relevant contract provisions or their meaning. Consequently, the Court states that it is:

. . . not confident that it has sufficient evidence to determine, as a matter of law, whether the contract operates in the manner advocated by either party. Without a better understanding of the contract, the court will not presume that the portions identified by the parties – in piecemeal fashion – provide a solid foundation for adjudication of the parties' rights and obligations under the contract.

The Navy's Motion to Dismiss is denied.

A copy of the opinion can be downloaded [here](#).