

J. SLOTNIK COMPANY**CONTRACT NO. V101AC0005****VABCA3254, 3255,
3289, 3416, 3442,
3468, 3489-91,****VA MEDICAL CENTER****3526,****WHITE RIVER JUNCTION, VERMONT****3538-40 & 3966**

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OPINION BY ADMINISTRATIVE JUDGE PULLARA

These fourteen appeals were taken from Contracting Officer's (CO's) final decisions, or failures by the Contracting Officer to issue a decision, on both Contractor and Government claims in connection with a contract for the construction of a building at the VA Medical Center, White River Junction, Vermont.

The record includes separate Rule 4 Appeal Files (e.g., 3254 R4, tabs 1-27) for most of the appeals, Government Exhibits (Exh. G-1 through G-70), Appellant Exhibits (Exh. A-1 through A-21), the trial transcript (Tr. 1-1383), and the parties' post-trial briefs.

OVERVIEW OF CLAIMS

Seven of the appeals involve issues relating to the early work of excavating the site and constructing the building foundation. The other seven appeals arose later in the project and involve unrelated claims pertaining to various structural, engineering or architectural details.

Among the first items of work performed at the site was the excavation and removal of subsurface materials from above the rock layer. Such materials consisted mostly of silty sand and glacial till which, according to the soil report and the solicitation, were not expected to yield any reusable backfill. Nevertheless, the Contractor expected to encounter some usable backfill and stockpiled what it considered to be such reusable materials. The VA initially disagreed with the Contractor's reuse of these materials and required the Contractor to import other backfill, for which costs a claim was filed. (VABCA No. 3468, Contractor claim for extra compensation, \$37,483) Eventually, the VA permitted the Contractor to use some of the on-site materials but issued a contract change order assessing a credit for this use. (VABCA No. 3526, Government claim for credit, \$18,480)

After removing the materials above the rock layer, the Contractor drilled, blasted and removed nearly 11,000 cubic yards of rock from the site, or almost 4,000 cubic yards above the 7,000 cubic yard amount included in the solicitation for bid purposes. The VA Contracting Officer allowed compensation of \$90,477 by contract change orders, but in its post-trial brief Government Counsel asserted that the Contractor was properly due only about \$40,000 and, therefore, had been overpaid nearly \$50,000. In its brief, the

Contractor sought additional compensation of \$238,350 less a credit for the \$90,477 from the change orders. (VABCA No. 3538, Contractor claim for \$238,350) The Board has no jurisdiction over any Government claim as no such claim was ever asserted by the Contracting Officer.

After excavation, but prior to the placement of concrete footings, the VA required that the footings located on rock, as distinguished from those footings placed on silty sand or glacial till, have a two foot cushion of sand and gravel fill below the bottom of the footing. The Contractor denied that the contract required such cushion and sought additional compensation. (VABCA No. 3254, Contractor claim for \$34,022.68) In addition, prior to the placement of the two-foot sand and gravel cushions, Slotnik sometimes had to place concrete to raise the grade up to the bottoms of the two foot cushions whenever the finished grade resulting from drilling, blasting and excavating was beneath that level. The VA contended that this work was necessary, contemplated by the contract, and did not constitute extra work for which compensation was due, since it was caused by the Contractor's overblasting. The Contractor insisted the extra work was beyond its control, for which compensation was due. (VABCA No. 3289, Contractor claim for \$18,154)

Following construction of the footings, and prior to the Contractor's placing certain ground floor slabs, the VA required compaction of the fill under slabs to 95%, whereas the Contractor asserted that the contract required only 80% compaction. (VABCA No. 3255, Contractor claim for \$23,440)

The construction of the area east of a step-up wall, referred to as the "8-line wall," was the subject of a significant design change by the VA, identified as Field Change Order "S." The quantification of that change, and the scope thereof, are matters of extensive and complex disagreement between the parties, both as to quantities of labor, equipment and materials, as well as appropriate unit prices to be applied. The Contractor sought extra compensation in the amount of \$79,620. The VA issued a change order in the amount of \$18,981 and, at one point, internally considered revising that to \$23,261.49. In its brief, the Government took the position that the Contractor was not entitled to any contract price increase, arguing that the change actually effected a reduction in the Contractor's cost of performance for which the Government is entitled to a contract price decrease of \$72,916. (VABCA No. 3490, Contractor claim for \$79,620.) The Board has no jurisdiction over any Government claim as no such claim was ever asserted by the Contracting Officer.

One other excavation matter arose that did not relate to the foundation of new Building No. 44. Rather, it pertained to a separate existing building. This construction project included the installation of piping into the crawl space of a nearby existing building, Bldg. No. 28. There, the VA contends, the contract required excavation in the crawl space in order to install certain equipment. When it was discovered by the VA, during performance of the work, that no excavation was necessary, the VA took a credit of \$871 for "savings" to the Contractor by a field change order. However, the Contractor claims it discovered, during the pre-bid inspection, that excavation was not necessary, and that it did not include such work in its bid, so that no credit was due the VA. (VABCA No. 3416, Contractor seeks rescission of the field change order and payment of \$871)

Following the construction of concrete foundations, steel columns with factory-attached base plates were to be bolted to the tops of reinforced concrete piers or pilasters. The VA determined that the resulting bearing between surfaces was inadequate. The Contractor disagreed but, under protest, pressure grouted the connections with epoxy and sought extra compensation for this work. (VABCA No. 3442, Contractor claim for \$12,982)

Waterproofing of the below-grade walls and footings became an issue when the Contractor proposed a substitution of materials, which was approved by the VA, but with a credit of \$974 taken by field change order. (VABCA No. 3489, Contractor seeks to recoup the \$974 credit taken by the Government)

One appeal involves an HVAC matter, *i.e.*, whether all branch ducts were required to have volume dampers installed. The VA required that and the Contractor disagreed, claiming that 94 extra dampers were installed beyond the contract requirements. (VABCA No. 3491, Contractor claim for \$4,088)

A dispute involving drywall arose in connection with the construction of several drywall enclosures around steel columns. Initially, the Contractor built the columns without certain required features; the VA decided to accept the columns as constructed and to take a credit. The Contractor argued there were no savings to be passed on to the VA. (VABCA No. 3539, Contractor seeks to recover a \$1,418 credit taken by the VA) The Contractor thereupon modified the columns, without authorization, to bring them into conformance with the original contract requirements. The VA directed the Contractor to return the columns to their originally constructed condition, which the Contractor did, and for which it now seeks reimbursement. (VABCA No. 3966, Contractor claim for extra work in the amount of \$2,882)

Finally, the Contractor seeks additional compensation for allegedly being required by the VA to furnish a more expensive acoustical wall panel system than that required by the contract. (VABCA No. 3540, Contractor claim for \$5,888)

The amounts in dispute in each appeal are tabulated below:

APPEAL NO.	DESCRIPTION	CLAIM AMOUNT
3468	Use Off-Site Fill	\$37,483.00
3526	Use On-Site Fill	\$18,480.00
3538	Additional Rock	\$238,350.00
3254	2' Cushion for Footings	\$34,022.68
3289	Concrete Fill	\$18,154.00
3255	Compaction	\$23,440.00
3490	8-Line Wall (FCO S)	\$79,620.00
3416	Bldg. 28 Crawl Space	\$871.00
3442	Grout/Leveling Plates	\$12,982.00
3489	Waterproofing	\$974.00
3491	Addl. Vol. Dampers	\$4,088.00

3539	Column Cap. Credit	\$1,418.00
3966	Column Cap. Rework	\$2,882.00
3540	Acoustic Wall Panel	\$5,888.00
	Total:	\$478,652.68

BACKGROUND

On May 3, 1989, the Department of Veterans Affairs (VA or Government) issued Solicitation No. 8615-AE for the construction of a new three-story Research and Education Building (Bldg. No. 44) at the VA Medical Center (VAMC), White River Junction, Vermont. On September 5, 1989, the VA awarded Contract No. V101AC-0005 to the J. Slotnik Company, Newton, Massachusetts (Slotnik or Contractor), for the construction of Building No. 44, in the amount of \$7,980,000. The Contract required completion within 915 days, or approximately 2½ years, after receipt by the Contractor of the Notice to Proceed. (3254 R4, tab 27)

The Notice to Proceed (NTP) was received by the Contractor in late September 1989, thereby requiring completion by the end of March 1992. Work began soon after the NTP was received and was completed ahead of schedule in early 1992. (Exhs. G-4-6; tr. 910, 1065)

Slotnik's excavation subcontractor was the R. J. Colton Company (Colton), whose drilling and blasting subcontractor was Maine Drilling & Blasting Company (Maine D&B). Other subcontractors included Northeastern Heating, Ventilating and Air Conditioning, Inc. (NE HVAC), East Coast Steel, Inc. (East Coast) and W. R. Grace Roofing Company (Grace). In addition, Colton had made arrangements with the John A. Russell Corporation (Russell) to dump unused rock and fill from the VA site at a site near the VA hospital.

GENERAL FINDINGS OF FACT REGARDING EXCAVATION

The building site was on a hillside near existing Buildings 28 and 4 at the VAMC. The new building was to be rectangular with an angular extension at the front, or west, end of the building, sometimes referred to herein as the "knuckle" area. Plan locations were determined relative to Structural Grid lines (Dwg. No. 44-G2), or building lines. Our attention will focus primarily on the rectangular portion of the building between grid lines 2 and 10. In plan view, the east-west grid lines were lettered A through E, with A being northernmost, and the north-south building lines were numbered 2 through 10, with 10 being easternmost. The numbered lines were spaced 20'-6" apart (2-3, 3-4, and so forth) and the lettered lines were either 20'-6" apart (A-B & D-E) or 27' apart (B-C & C-D), so that overall the building was approximately 164' in length (8 x 20½) and 95' in width (2 x (20½ + 27)).

The building was to be set into the side of the hill, with a ground floor, first floor, second floor and a roof penthouse as depicted, at the time of bidding, in the following illustration:

The sketch above is a section view, looking north, at proposed and existing features along the C-line, between grid lines 2 and 10, including the proposed building outline, proposed supporting spread footings and slab elevations, the original ground surface

contour, and the original subsurface rock contour. This composite sketch, created by the Board as a visual aid, represents the Board's understanding of the main building elements relative to existing site conditions, based on combining information contained in the boring logs and on contract plan and elevation drawings.

The stated floor elevations are measured at the top of each concrete floor slab and the stated footing elevations are measured at the bottoms of the footings. The ground floor concrete slabs between 2-line and 8-line, as well as the second floor concrete slabs, were supported by concrete walls, columns and piers, which were in turn supported by the concrete wall footings and spread footings. Walls and wall footings are not shown above, except for the 8-line wall running from the ground floor slab to the second floor slab. The spread footings were typically square, up to 9½ by 9½ by 3 feet thick, and wall footings were commonly 20" wide by 12" thick. The ground floor slabs, the 8-line wall, and the second floor slabs east of the 8-line were all concrete, and the rest of the superstructure was of fabricated steel construction with concrete decks.

VABCA Nos. 3468 & 3526
(USE OF OFF/ON-SITE FILL)
FINDINGS OF FACT

Twenty-one soil borings and three rock corings were taken at the site in July and August 1984, some five years before the subject contract was awarded. The borings and corings were spaced at approximately 50 foot intervals on a grid extending over an area approximately 200 feet by 250 feet. The data include references to "silty sand," "glacial till" and rock with "numerous fractures" or rock that was "[v]ery badly fractured." This site work was performed by Green Mountain Boring Co., Inc. The boring and coring logs were provided to Civil Engineering Associates (CEA), the VA's soil consultant. These data were included in a September 1984 subsurface investigation report provided by CEA to the VA, as well as on Contract Drawing No. 44-B1, dated March 20, 1989 (Soil Boring Logs). The report made various recommendations concerning the design of the proposed building foundation. This report will be considered in greater detail in connection with several of the individual appeals. (3254 R4, tab 4)

The solicitation provided to bidders stated:

1.8 PHYSICAL DATA

A. Data and information furnished or referred to below is for the Contractor's information. The Government shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

1. The indications of physical conditions on the drawings and in the specifications are the result of site investigations by Green Mountain Boring Company, Inc., Barre, Vermont.

B. Subsurface conditions have been developed by core borings and test pits. Logs of subsurface exploration are shown diagrammatically on drawings.

C. A copy of the soil report will be made available for inspection

by bidders upon request to the Engineering Officer at the VA Medical Center and Regional Office, White River Junction, Vermont and shall be considered part of the contract documents.

D. Government does not guarantee that other materials will not be encountered nor that proportions, conditions or character of several materials will not vary from those indicated by explorations. Bidders are expected to examine site of work and logs of borings; and, after investigation, decide for themselves character of materials and make their bids accordingly. Upon proper application to Veterans Administration, bidders will be permitted to make subsurface explorations of their own at site.

(Specification Section 01010)

In the above-referenced soil report to Alexander/Truex/deGroot, the VA's Architect/Engineer (A/E), dated September 7, 1984, CEA presented a profile and characterization of the subsurface materials. This report was based on an examination of the boring logs and visual inspection of the soil and rock samples recovered. The general site conditions and specific soil/rock properties were described as follows:

A. General Site Conditions - the site is a hillside with elevation changes on the order of 60 to 70 feet with woods covering a majority of the project area. There is at least one visible outcrop of bedrock on the site.

B. Sequence of Soil Layers - the soils encountered during the exploration program consist of a layer of silty sand, generally brown in color and many times containing rock fragments (angular pieces of rock from 1/2 inch to 2 inches in size). The thickness of this layer varies from negligible to approximately 16 feet in thickness. The next layer encountered was a glacial till that was very dense and tended to be granular in nature with no plasticity. The till varies in thickness from 0 to 11 feet. The third layer encountered is the bedrock underlying the site. All soil borings encountered "refusal" with depths varying from 3 feet to 29 feet.

(3468 R4, tab 2)

In describing "Subsurface Conditions," and "Engineering Characteristics of the Soils and Rocks," subparagraph C.4 of the report stated:

For lateral earth pressures against buildings, we do not recommend the use of soils encountered on the site as backfill material. Select granular fill should be imported to the site and placed as compacted backfill . . .

The "Other Considerations" section included the following:

C. There was no fill material encountered during the soil borings. Small quantities of material may be suitable for grading the site but no material found would be suited for use as structural backfill under slabs or against foundation walls.

E. We do not recommend supporting pavement or building slabs on the existing grade. For building slabs, we recommend a compacted gravel base of at least 12 inches in thickness. Material should be free draining meeting the following gradation requirements:

<i>Sieve Size</i>	<i>Percent Passing by Weight</i>
3 inch	100
2 inch	90 to 100
# 4	50 to 100
#100	