

INCORE, INC.

CONTRACT NO. V101DC0149

VABCA-6305, 6345,
6541-6543

DALLAS-FORT WORTH NATIONAL
CEMETERY
DALLAS, TEXAS

Theodore M. Bailey, Esq., San Antonio, Texas, for the Appellant.

Patrick J. LaMoure, Esq., Trial Attorney; *Charlma J. Quarles, Esq.*, Deputy Assistant General Counsel; and *Phillipa L. Anderson, Esq.*, Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

**PREHEARING ORDER
AND
ORDER OF DISMISSAL**

1. In a telephonic PREHEARING CONFERENCE convened by the Board on October 4, 2001 and attended by counsel for both parties matters pertaining to the scope of the hearing in these appeals, additional pending claims, and the schedule of prehearing hearing activities were discussed. The parties and the Board agreed to a course of action that includes vacation of the April 13, 2001 PREHEARING ORDER, indefinite postponement of the hearing and dismissal of certain of the appeals without prejudice.
2. Since the disposition of the appeals in VABCA-6541 (Payment of Contract Retainage), VABCA-6542 (Liquidated Damages) and VABCA-6543 (Reprocurement Costs) is dependent on the resolution of appeals in VABCA-6305 (Termination for Default) and VABCA-6345 (Delay) and disposition of the appeals in VABCA 6541-6543 will not be reached for an inordinate length of time, the Board and the parties are in agreement that no purpose is served by keeping these appeals on the active docket. Accordingly, pursuant to Rule 30, the Appeals of Incore, Inc. in VABCA-6541-6543 under Contract No. V101DC0149 are hereby **DISMISSED WITHOUT PREJUDICE**. Unless the Board or either party takes action within three years to reinstate these appeals, the dismissal shall be deemed to be with prejudice without further notice from the Board.

3. From the discussions during the PREHEARING CONFERENCE, the Board understands that Appellant anticipates submitting several more claims for delay arising out of this contract to the contracting officer for decision. The parties and the Board anticipate that these additional claims, if denied by the contracting officer, would be appealed and consolidated with these appeals for hearing. Accordingly the PREHEARING ORDER in the appeals in VABCA-6305 and 6345 is hereby VACATED and the hearing, scheduled to commence on March 5, 2002, is indefinitely postponed. Upon receipt of the additional claims for delay, the Government is directed to inform the Board of when it expects to issue a final decision.

4. The Board anticipates reestablishing a schedule for a hearing on VABCA-6305 and VABCA-6345 plus any additional delay claims as soon as any additional delay claims are docketed. The scope of any such hearing will be limited to issues involving the propriety of the termination for default and Appellant's entitlement to additional contract performance time, the issue of money damages for delay will not be within the scope of any such hearing.

5. The parties are strongly encouraged to continue to pursue Alternative Dispute Resolution in these matters and to keep the Board informed of their efforts in that regard.

IT IS SO ORDERED

DATE: **October 12, 2001**

RICHARD W. KREMPASKY
Administrative Judge