

MEADOW VALLEY CONTRACTORS, INC.,)	AGBCA No. 98-161-1
)	
Appellant)	
)	
Representing the Appellant:)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

 May 7, 1999

OPINION BY ADMINISTRATIVE JUDGE EDWARD HOURY

This appeal arose under Contract No. 50-8371-6-39 between the Forest Service, U. S. Department of Agriculture, and Meadow Valley Contractors, Inc., of Phoenix, Arizona (Appellant). The contract, in the amount of \$4,578,349.50, was awarded September 30, 1996, and required construction of the School House Campground in the Tonto National Forest in Arizona. The work included construction of 7.88 miles of paved road, parking lots, a concrete boat ramp, toilet buildings, 200 camp sites, an events area, and photo-voltaic lighting.

Appellant filed a \$122,183.85 claim because of delays caused by the allegedly defective Government-furnished crushed aggregate base course material. Appellant stated that the material provided did not have a fractured face to lock the aggregate together, and that the material had "very little binder." Appellant contended that even with 95 percent compaction the subbase constructed using the material would not support Appellant's paving machine, and that this caused the complained of delays.

The Contracting Officer (CO) acknowledged that a portion of Appellant's production problems might have resulted from the aggregate base, but contended that the equipment used was not appropriate for the work required by the contract and that Appellant's anticipated production rates were overly optimistic. The CO paid \$52,711.56 of the claim, and Appellant filed a timely appeal for the remainder, electing to process the appeal under the Board's Accelerated procedure which anticipates a decision within 180 days of the election. Rule 12.3, 7 C.F.R. § 24.21.

The Complaint and Rule 4 file were filed. The Board convened a telephone conference call to discuss the issues and set a hearing in late August or early September to support the November 30, 1998 decision date. The Board was informed that the parties were conducting settlement discussions, that the Government desired an indefinite stay for filing its answer pending completion of settlement discussions, and that counsel for the Appellant was preparing for a trial in another matter and had no objection to the Government's request for a stay. The Board granted the Government's request and removed the appeal from the accelerated status because the parties no longer desired to support the November 30, 1998 decision date. The parties were directed to advise the Board when a settlement was reached, and/or when the parties wanted to set a hearing.

On December 23, 1998, the Government informed the Board that the appeal would be withdrawn. By letter dated April 6, 1999, Appellant confirmed that the appeal was being withdrawn.

DECISION

The appeal is dismissed as withdrawn.

EDWARD HOURY
Administrative Judge

Concurring:

HOWARD A. POLLACK
Administrative Judge

JOSEPH A. VERGILIO
Administrative Judge

Issued at Washington, D.C.
May 7, 1999