

TAMARACK DEVELOPMENT,)	AGBCA No. 98-199-3
)	
Appellant)	
)	
Representing the Appellant:)	
)	
Darren Cobrae)	
Tamarack Development)	
4924 Balboa Blvd., #360)	
Encino, California 91316)	
)	
Representing the Government:)	
)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

March 18, 1999

OPINION BY ADMINISTRATIVE JUDGE HOWARD A. POLLACK

This matter arose from Contract No. 50-F352-7-075 between the Natural Resources Conservation Service (NRCS or Government) and Tamarack Development (Tamarack) of Encino, California, for Emergency Watershed Protection at Santa Catalina Creek, Bayamon, Puerto Rico. Tamarack claimed entitlement to \$86,689.28 in extra costs primarily associated with additional work and delays caused by what it characterized as unanticipated volume and flow of water in the project area and by claimed defective specifications. In addition, Tamarack contested a Government claim for delay costs of \$8,166.74. Tamarack filed a timely appeal with this Board, AGBCA No. 98-199-3, pursuant to the Contract Disputes Act, 41 U.S.C. §§ 601, et seq. Tamarack elected that the appeal be processed under the Accelerated Procedure which is governed by Board Rules 12.1(b) and 12.3. Accordingly, the target date for a decision was March 22, 1999.

Subsequent to docketing, pleadings were filed and several preliminary matters undertaken. During a conference call on January 27, 1999, the parties revealed that they had initiated settlement negotiations, but had not reached an agreement. The presiding judge offered the services of the

Board in mediation. Both the Government and Tamarack accepted. The Alternative Dispute Resolution (ADR) case was assigned to a non-panel member and docketed as AGBCA No. 99-135-ADR. On January 29, 1999, the non-panel member of the Board conducted a telephonic mediation between the parties. During the mediation, the Government and Tamarack agreed upon settlement terms. The settlement was then confirmed in a letter of January 29, 1999, from counsel for NRCS which set out the terms and coverage of the agreement. While the letter clearly set out the parties' agreement, counsel's letter did not specifically state that the appeal was to be dismissed with prejudice. On February 10, 1999, the Administrative Judge who handled the mediation issued a Ruling closing the ADR matter. Tamarack Development, AGBCA No. 99-135-ADR, 1999 WL 79358 (February 10, 1999).

By letter of March 3, 1999, the Board wrote the parties and notified them that the Board was planning to dismiss the appeal. The Board asked for confirmation as to whether the matter was to be dismissed with prejudice.

By letter of March 9, 1999, counsel for NRCS on behalf of both parties confirmed that the parties mutually agreed to dismiss the matter with prejudice.

DECISION

The appeal is dismissed with prejudice.

HOWARD A. POLLACK
Administrative Judge

Concurring:

EDWARD HOURY
Administrative Judge

Issued at Washington, D. C.
March 18, 1999