

WEEKLY BROS., INC.,)	AGBCA No. 2001-132-3
)	
Appellant)	
)	
Representing the Appellant:)	
)	
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)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

August 16, 2001

Before HOURY, POLLACK, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge HOURY.

This appeal arose under Contract No. 53-04R4-8-9680 between the Forest Service, U. S. Department of Agriculture, and Weekly Bros., Inc., of Idleyld Park, Oregon (Appellant). The contract required the installation of utilities for the Middle Fork District Office building in the Willamette National Forest in Oregon. The utilities included domestic water and fire water systems, an electrical supply system, a sanitary septic sewer system, and a telecommunications system. The contract was awarded September 1998.

After the acceptance of Appellant's work, by Contracting Officer's (CO's) letter dated December 11, 2000, the CO advised Appellant that a latent defect (a misaligned gasket) had been found in a 4-inch water line that had been installed by Appellant. The defect had been found by the Government's plumbing contractor who was working on site at the time. The Government had the plumbing contractor fix the defect and assessed the cost of fixing the defect against Appellant in its letter. The CO closed the letter stating that if Appellant had questions, they should be brought to the CO's attention for consideration.

Appellant filed a timely appeal, asserting that the Board had jurisdiction under Garrett v. General Electric, 987 F.2d 747 (Fed. Cir. 1993). Appellant elected the Board's Accelerated Procedure, 7 CFR 24.21, Rule 12.3, requiring a decision within 180 days of the election. It was Appellant's position that the Government failed to show the defect existed at the time of acceptance and that the Government had given Appellant no notice prior to correcting the defect.

The Board docketed the matter February 7, 2001. By letter dated February 27, 2001, the Government filed a motion to dismiss, asserting that the CO's December 11, 2000 letter was not a CO's final decision, and that therefore, the Board lacked jurisdiction. Appellant filed an opposition to the Government's motion.

The Board convened a telephone conference on March 15, 2001, to discuss the issues with the parties. It was agreed that the appeal would be held in abeyance for 30 days to allow the parties an opportunity to negotiate a settlement. Thereafter, Appellant paid the disputed amount to the Government under protest and demanded a CO's decision. The CO rendered a decision dated March 23, 2001, denying Appellant's claim. Appellant filed a timely appeal which the Board docketed as AGBCA No. 2001-144-3.

Thereafter, by letter dated April 16, 2001, the parties were advised by the Board that the present appeal would be dismissed as moot.

DECISION

This appeal is dismissed as moot. It has been superseded by appeal AGBCA No. 2001-144-3.

EDWARD HOURY
Administrative Judge

Concurring:

HOWARD A. POLLACK
Administrative Judge

ANNE W. WESTBROOK
Administrative Judge

Issued at Washington, D.C.
August 16, 2001