UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: April 2, 2021

CBCA 6904

GLEN/MAR CONSTRUCTION, INC.,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Mark E. Shaffer of Offit Kurman, Tysons Corner, VA; and Edward DeLisle of Offit Kurman, Plymouth Meeting, PA, counsel for Appellant.

David G. Fagan, Office of General Counsel, Department of Veterans Affairs, Portland, OR, counsel for Respondent.

Before Board Judges **BEARDSLEY**, **HYATT**, and **SHERIDAN**.

SHERIDAN, Board Judge.

At issue in this appeal is the claim of appellant, Glen/Mar Construction, Inc. (Glen/Mar), for 229 additional days and $642,021.65 for delays arising out of additional work associated with a bilateral modification executed by the parties. The contracting officer denied the claim as being barred by the contractor's release of claim contained in that modification. Glen/Mar appealed the contracting officer's final decision to the Board, seeking payment in full.

Respondent, the Department of Veterans Affairs (VA), moves for summary judgment, arguing that the release unambiguously relieves the VA from any further liability due to the changed work associated with the bilateral modification.

Glen/Mar argues that the release does not apply to the current appeal because the parties agreed that the release would only be applicable to claims asserted prior to the end of the contract performance term. Glen/Mar further asserts that the parties continued to negotiate the completion date and the delay claim following the execution of the release, evidencing the parties' intent that the release would not apply to the matter addressed in this appeal. For the reasons set forth below, we grant respondent's motion for summary judgment and deny the appeal.

Background

The dispute arises out of contract VA260-17-C-0019, which involved demolition and replacement work due to seismic deficiencies in certain buildings at the VA's Southern Oregon Rehabilitation Center and Clinics, located in White City, Oregon.[1] Glen/Mar was awarded the contract on July 31, 2017.

The contract provided for a two-phase performance period, spanning over 450 days, with a total contract award of $8,349,793. Phase one of the contract involved various submissions, including performance bonds, a schedule breakdown, a schedule of values, safety schedules, and material submittals. Phase two included the demolition and construction work required for the project. Among several documents in the contract was drawing E1.2. In pertinent part, keynote 10, accompanying the drawing, stated that prior to the start of demolition work, there would need to be "a new permanent bypass for the existing Century Link[2] campus fiber feed."

Around March 7, 2018, an issue arose between the parties as to who bore the primary responsibility of completing the Century Link work. Both Glen/Mar and the VA took the position that the keynote, when read in conjunction with specifications, placed the liability

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[1] The record considered by the Board in deciding this motion consists of the respondent's appeal file exhibits (exhibits 1-27); appellant's notice of appeal and complaint (with appellant's supplemental exhibits 1-17); respondent's answer; respondent's motion for summary judgment and statement of undisputed material facts (with exhibits 1-16, including Declaration of Michael Neer (Dec. 21, 2020), and Declaration of John N. Murphey (Dec. 22, 2020)); appellant's opposition to respondent's motion for summary judgment and statement of genuine issues (with exhibits A-C and exhibits 1-16, including Declaration of Kevin Mitchell (Jan. 22, 2021), Declaration of Matthew Vanderkin (Jan. 22, 2021), and Declaration Andy Brown (Jan. 22, 2021)); and respondent's reply brief in support of its motion for summary judgment (with exhibits 1A-2A).

[2] The correct spelling is "CenturyLink," but for consistency, we have used the spelling used by the parties.

of the Century Link work on the other party. After a lengthy discussion, the VA agreed to take responsibility for the Century Link work and stated that it would issue a change order reflecting as much.

The VA contracting officer sent an email to Glen/Mar requesting that it submit a change proposal for the Century Link work. In response, Glen/Mar submitted three change order proposals. The proposals involved the Century Link work, camera fiber termination work, and some water line tap work.

The Century Link work proposal noted that if it received direction to proceed by April 27, 2018, Glen/Mar would only require an additional fifteen calendar days to complete the work. Glen/Mar proposed costs of $21,679.95 for the work and fifteen additional calendar days of delay. Mr. Michael Neer, a VA contracting specialist, rejected the proposal and requested that the additional days of delay and associated costs be removed from the proposal.

A telephone conference was held on April 25, 2018, between Mr. Neer; Glen/Mar's project manager, Mr. Matthew Vanderkin; and VA's contracting officer representative, Mr. John N. Murphey. The parties' accounts of this conversation differ significantly. Mr. Vanderkin described the April 25th call and the lead-up to the issuance of modification P00001 which addressed the Century Link work:

> On April 25, 2018, I held a telephone conference with the agency's Contracting Officer "[CO"], [Mr.] Neer, and the Contracting Officers Representative ["COR"], [Mr.] Murphey, to discuss [the proposals], and their impact on the project's schedule and cost.
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> During this telephone conference, I explained that the Century Link work had the potential to have significant impacts to [Glen/Mar's] ability to complete the project according to the existing schedule, because the fiber line ran right through building 207's basement and would therefore prevent [Glen/Mar] from performing the work according to its ordinary sequence. I also explained that performing work out of sequence would delay various trades from starting and completing their work. I explained that this could have a significant effect on the critical path and substantially delay completion of the project. I explained that [Glen/Mar] would be entitled to be compensated for the additional time it performed work as the result of these delays.
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> . . . .

> Mr. Neer told me that the agency did not want to agree to pay a potentially large claim for delay before the parties first attempted to mitigate these delays by performing work out of sequence. Mr. Neer stated that while he expected [Glen/Mar] would incur some delays and cost of delays, that he was going to direct [Glen/Mar] to remove the delays and costs of delays from the [proposal], with the understanding that the delays and costs of these delays would be addressed at a later date after the parties were able to determine the full extent of the delays. Mr. Neer represented to [Glen/Mar] that the agency would revisit and pay [Glen/Mar's] delays and cost of delays at a later date, once the total delay could be quantified.
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> On April 25, 2018, and in reliance of the agency's directions . . . I, on behalf of [Glen/Mar], resubmitted [the proposal] along with a cover letter, without the inclusion of the delay-related expenses associated with the Century Link fiber work . . . . [Glen/Mar's] cover letter memorialized the CO's representations that the agency would pay [Glen/Mar's] actual cost of delay after the actual impact of the Century Link Fiber Work could be determined. . . . The agency never provided any oral or written communications to me that indicated it disagreed with [Glen/Mar's] understanding of the parties' agreement, or that the agency would not honor its promise to pay [Glen/Mar's] delays and costs at the end of the project.

However, he also declared:

> In reliance of the agency's promises, representations, and assurances that the delays [Glen/Mar] incurred while performing the work arounds, [Glen/Mar] started to perform work out of sequence in an attempt to mitigate the total length of delays it would incur while waiting for Century Link to mobilize to perform its work.

Mr. Kevin Mitchell, Glen/Mar's construction manager, and Mr. Andy Brown, Glen/Mar's vice-president, both recall conversations they had with Mr. Vanderkin regarding the call:

> On April 25, 2018, [Glen/Mar] held a telephone conference with the agency's Contracting Officer ["CO"], Michael Neer, and the Contracting Officers Representative ["COR"], John Murphey, to discuss [change proposals], and their impact on the project's schedule and cost.

> I am aware from my conversations with [Glen/Mar's] project manager, Matthew Vanderkin, that Mr. Neer instructed [Glen/Mar] to remove fifteen (15) days of delays from the [proposal] and that the Agency agreed to address and compensate [Glen/Mar] for its delays at a later date after the delays could be fully quantified. Mr. Neer's approach to handle delay costs separately and at a later date after the cost of the actual delays is quantifiable is consistent with the Agency's practice on other projects.

The VA's affiants, Mr. Neer and Mr. Murphey, have entirely different recollections of the April 25th conversation. Mr. Neer, who was originally the contract specialist and on January 11, 2019, became a contracting officer on the contract, recalled:

> On or about April 25, 2018, I had a telephone call with Mr. Vanderkin. During the call I requested Mr. Vanderkin to remove the 15 days and the $21,679.95 for Additional General Conditions and submit a revised proposal for the Century Link Fiber Reroute Work. I advised Mr. Vanderkin that if he disagreed with the VA's decision then he would need to utilize any remedies available to Glen/Mar in its contract.
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> At no point during my April 25, 2018, telephone call with Mr. Vanderkin, or at any other time during the performance of the contract and project, did I advise Glen/Mar that the VA would revisit the Century Link Fiber Reroute Work in order to assess any additional days that might be owed to Glen/Mar. In addition, at no point did I promise, represent, or assure Glen/Mar that Glen/Mar would be entitled to receive any additional compensation for the Century Link Fiber Reroute Work. My position, which reflects the VA's position, was and has always been that Glen/Mar is not entitled to any additional compensation for the Century Link Fiber Reroute Work and that if Glen/Mar disagrees with the VA then Glen/Mar is entitled to submit a claim asking for a contracting officer's final decision. I made this very clear to Mr. Vanderkin during our April 25, 2018, telephone call.

Mr. Murphey's declaration does not address the specifics of the April 25th telephone call, but he noted:

> At no time during any of telephone conversations or communications with Glen/Mar, both before and after modification P00001 was signed and issued, did I represent or assure Glen/Mar in any way that Glen/Mar would be entitled to receive any additional compensation for the Century Link Fiber Reroute Work. My position, which reflected the VA's position, was that Glen/Mar was

> not entitled to any additional compensation or time for the Century Link Fiber Reroute Work.

Following the above-discussed telephone conference, Glen/Mar removed the additional fifteen days and associated costs from its proposal and resubmitted the proposal to the VA on April 25, 2018. The revised proposal included $37,796.33 in additional costs associated with the Century Link work but did not include any additional days or costs for delay associated with the additional work. A cover letter attached to the email transmitting the proposal provided:

> [Glen/Mar is] currently performing "work arounds" to keep the project schedule moving but there may or may not be schedule impacts as a result of this work. Glen/Mar and the VA will revisit the schedule impacts of this work at an appropriate time, after it has been completed.

The VA directed Glen/Mar to proceed with the Century Link work on April 26, 2018. The subcontractor Glen/Mar obtained to do the Century Link fiber work did not begin performance until more than forty days after the VA directed Glen/Mar to proceed with the Century Link work. The subcontractor began removing the original fiber wiring on June 5, 2018, and completed the installation one week later.

The VA sent Glen/Mar proposed modification P00001, which included, among other things, additional costs for the Century Link fiber work at a negotiated cost of $37,796.33 and negotiated time of "*0 additional calendar days.*" (Emphasis added.) Modification P00001 also included the following contractor's statement of release:

> This modification represents *full and complete compensation for all costs, direct, and indirect, associated with the work agreed to herein, including but not limited to, all costs incurred for extended overhead, supervision, disruption or suspension of work, and labor inefficiencies, and this change's impact on unchanged work.*
>
> In consideration of this modification, agreed to herein as a complete equitable adjustment of the contractor's proposal arising under or related to the change(s) identified above, *the contractor hereby released the Government from any and all liability under this contract for further adjustment attributed to the contractor's proposals.*

(Emphasis added.)

Glen/Mar's vice-president, Andy Brown, executed modification P00001 on June 8, 2018, without adding any reservation of rights to the modification.

Addressing modification P00001, Mr. Neer stated:

> Modification P00001 itemized the Century Link Fiber Reroute Work under [the proposal] at a negotiated price of $37,796.33 with *zero additional days* added to the Contract Period of Performance. Mr. Andy Brown, Glen/Mar's Vice President, signed Modification P00001 on June 8, 2018, after the Century Link Fiber Reroute Work had commenced and only a few days prior to its actual completion.

(Emphasis added.) The executed modification included the statement of release language as quoted above. Mr. Neer noted:

> Neither Mr. Brown nor Mr. Vanderkin raised any concerns about the contractor statement of release language included in modification P00001. Mr. Brown signed modification P00001 without making any reservation of rights concerning the Century Link Fiber Rework Work. In fact, because of my April 25, 2018 telephone conversation with Mr. Vanderkin where I explained that the VA would not provide Glen/Mar with any further compensation for the Century Link Fiber Reroute Work, I was not surprised that Glen/Mar accepted modification P00001 with the contractor statement of release language and that Glen/Mar did not try to include any reservation of rights language for the Century Link Fiber Reroute Work.

On October 23, 2018, Glen/Mar submitted a revised master schedule. The meeting minutes for that day reflect: "[Glen/Mar] sent over revised master schedule that included the schedule impacts to date. The VA will review and continue conversation with GM about schedule." This appears to be the first time that the meeting minutes or master schedule addressed "impacts." Notes in the Glen/Mar revised master schedule or subsequent correspondence did not attribute the impacts to the VA. The revised master schedule or minutes surrounding it did not frame the time slippage in terms of being caused by the VA. On each of the daily logs, Glen/Mar submitted through November 1, 2019, it checked "No" in the box associated with "Impacts to Normal Progress of Work." Also, by November 1, 2019, the date of the actual completion of the contract, Glen/Mar was 229 days beyond the original contract completion date of March 17, 2018.

Glen/Mar raised what it refers to as a "schedule delay package" around August 27, 2019, when it submitted a request for equitable adjustment (REA), asserting entitlement to $859,917.60 for "schedule impacts" including, but not limited to, 229 additional days due to the Century Link work.[3] The parties scheduled a meeting to discuss the REA, but the VA cancelled the meeting. Ms. Traci Jackson, a VA contract specialist, contacted Glen/Mar inquiring as to how the contractor calculated the delay in light of the "dispositive nature" of modification P00001. Glen/Mar replied by submitting a portion of the revised master schedule reflecting delays related to the Century Link work. The record does not indicate that there was further discussion on this inquiry.

The parties had a telephone call on November 6, 2019, between Mr. Vanderkin, Mr. Murphey, Mr. Brown, Mr. Mitchell, Ms. Jackson, Mr. Neer, and Mr. Gregory Wilde, another contracting officer. Again, the parties remember the call very differently. Mr. Vanderkin stated:

> On November 6, 2019, I held a telephone conference with [Glen/Mar's] vice president, Andy Brown, [Glen/Mar's] construction manager, Kevin Mitchell, and Gregory Wilde, Michael Neer, John Murphy [sic], and Traci Jackson on behalf of the Agency. Mr. Wilde had assumed duties as the [contracting officer] of this project. During this telephone call, I, along with Mr. Brown and Mr. Mitchell explained that the Agency had promised to exempt [Glen/Mar's] delay claims from [modification P00001], and to pay [Glen/Mar] for its costs of delays resulting from the Century Link work at a later date. *During this same telephone statement, Mr. Wilde asked Mr. Neer if this was true. Mr. Neer confirmed that he had made these statements, that he directed [Glen/Mar] to remove the estimated delays from the initial [proposal], and that he agreed that the Agency would resolve [Glen/Mar's] cost of delays attributed to the Century Link work at a later date.* Upon hearing this statement, Mr. Wilde informed me, Mr. Brown and Mr. Mitchell that he needed to review [Glen/Mar's] claim further and he terminated the call.

(Emphasis added.) This is further corroborated by Messrs. Mitchell and Brown, who remembered that during the November 6, 2019, telephone call, Mr. Neer confirmed that prior to the issuance of modification P00001 he directed Glen/Mar to remove delays from the initial proposal and stated that the VA would resolve the costs of delays attributed to the Century Link work at a later date.

VA's affiants did not directly reference the November 6, 2019, call. However, Mr. Neer stated:

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[3] The other impacts have been resolved and are not part of this appeal.

> At no time after the completion of the Century Link Fiber Reroute Work did I promise, represent or assure Glen/Mar that Glen/Mar would be entitled to receive any additional compensation for the Century Link Fiber Reroute Work. My position, which reflected the VA's position, was that Glen/Mar was not entitled to any additional compensation for the Century Link Fiber Reroute Work.

This assertion was echoed by Mr. Murphey:

> At no time during any of telephone conversations or communications with Glen/Mar, both before and after Modification P00001 was signed and issued, did I represent or assure Glen/Mar in any way that Glen/Mar would be entitled to receive any additional compensation for the Century Link Fiber Reroute Work. My position, which reflected the VA's position, was that Glen/Mar was not entitled to any additional compensation or time for the Century Link Fiber Reroute Work.

Regarding the August 27, 2019, REA, the VA rejected Glen/Mar's additional time and costs associated with a delay caused by the Century Link work, referencing the release contained in modification P00001, as relieving the VA of any liability resulting from the work.

On April 7, 2020, Glen/Mar filed a certified claim seeking delay damages of $642,021.65 due to the Century Link work. Glen/Mar argued that the damages were due to errors and omissions in the design of technical documents. Glen/Mar further asserted that design defects led to the contractor incurring costs related to work performed outside the scope of the contract. In calculating its Century Link delay claim, Glen/Mar categorized its additional delay costs as follows:

General Conditions (229-day delay x $1075/day)	$246,175.00
10% fee on the general conditions	$ 24,617.50
Overhead Costs (under Eichleay) at $1586.00/day	$363,729.15
Mildew Cleansing Due to Century Link Delay	$ 7,500.00
Total	$642,021.65

Mr. Wilde issued a contracting officer's final decision denying the claim on June 5, 2020, citing the release language contained in modification P00001. Following the final decision, Glen/Mar filed an appeal with the Board.

Discussion

The standard for resolving a motion for summary judgment is well established. In order to obtain summary judgment, a party must show that there are no disputes of material fact and that it is entitled to judgment as a matter of law. *Eagle Peak Rock & Paving, Inc. v. Department of Transportation*, CBCA 5692, 19-1 BCA ¶ 37,337; *DOT Construction, Inc. v. Department of Agriculture*, CBCA 3966, 15-1 BCA ¶ 36,011; *see also 6th & E Associates, LLC v. General Services Administration*, CBCA 1802, 10-2 BCA ¶ 34,596. In considering a motion for summary judgment, all justifiable inferences must be drawn in favor of the nonmovant. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

In moving for summary judgment, the VA relies on the release language included in modification P00001. Relevant to the VA's argument, the language states:

> This modification represents full and complete compensation for all costs, direct, and indirect, associated with the work agreed to herein, including but not limited to, all costs incurred for extended overhead, supervision, disruption or suspension of work, and labor inefficiencies, and this change's impact on unchanged work.
>
> In consideration of this modification, agreed to herein as a complete equitable adjustment of the contractor's proposal arising under or related to the change(s) identified above, the contractor hereby released the Government from any and all liability under this contract for further adjustment attributed to the contractor's proposals.

Modification P00001 also specifically states that "0 additional calendar days" are attributed to the Century Link work. The VA asserts that this language unambiguously releases the Government from "any and all liability" from the change giving rise to the modification.

Glen/Mar argues that summary judgment is not appropriate because the record demonstrates that the VA agreed to exempt the delay claim associated with the Century Link work from the release and that because modification P00001 still shows the original completion date of March 17, 2019, "the release only applied to claims for cost [Glen/Mar] incurred while performing work up to the March 17, 2019 date of final completion." These arguments are unpersuasive given the clear wording of P00001.

"When a contractor executes a release that is complete on its face and reflects the contractor's unqualified acceptance and agreement with its terms, the release will be binding on both parties." *Fortis Networks, Inc. v. Department of the Interior*, CBCA 4176, 15-1 BCA ¶ 36,066 (citing *Turner Construction Co. v. General Services Administration*, GSBCA

15502, et al., 05-1 BCA ¶ 32,924). "When a bilateral contract modification does not contain any reservation of claims, the modification constitutes an accord and satisfaction as to the subject matter of the modification and the contractor cannot later narrow the scope of the modification." *Fortis Networks* (quoting *Trataros Construction, Inc. v. General Services Administration*, GSBCA 15344, 03-1 BCA ¶ 32,251). Finally, when a contract is not ambiguous, the parties may not vary the terms of the agreement through the use of extrinsic evidence, as the plain language of the contract controls. *Hunt Construction. Group v. United States*, 281 F.3d 1369, 1373 (Fed. Cir. 2002); *Textron Defense Systems. v. Widnall*, 143 F.3d 1465, 1469 (Fed. Cir. 1998).

The Board has previously upheld, as complete and valid, release language that is identical to that included in modification P00001. *RLS Construction Group v. Department of Veterans Affairs*, CBCA 6349, 20-1 BCA ¶ 37,566; *Stobil Enterprise v. Department of Veterans Affairs*, CBCA 5698, 19-1 BCA ¶ 37,428; *MJL Enterprises, Inc. v. Department of Veterans Affairs*, CBCA 2708, 12-2 BCA ¶ 35,167. In *Stobil* we found that the identical release provision clearly released the Government from "any and all liability under this contract for further adjustment attributed to the contractor's proposals."

The release before us unambiguously discharges any government liability related to the Century Link fiber work, including impacts and delays, and is binding on both parties. Further, the modification does not reserve any claims on behalf of Glen/Mar, regardless of whether the claims related to work completed before or after the initial contract completion date. There is no reasonable interpretation that supports a reading that the release was applicable only up to March 17, 2019. Glen/Mar may not attempt to limit the language of the release to bring a claim related to the very work that the modification unambiguously covers.

As noted by Glen/Mar there are "special and limited" circumstances that may arise, which might allow for the consideration of a claim, despite a general release. *See J. G. Watts Construction Co. v. United States*, 161 Ct. Cl. 801, 806 (1963). One such "special and limited" circumstance is where the conduct of the parties, in continuing to consider the claim after the execution of the release, makes plain that they never construed the release as constituting an abandonment of the claim. *Id*. at 807. In applying this exception, a tribunal "may refuse to bar a claim based upon the defense of accord and satisfaction when the parties continue to consider the claim after the execution of the release." *Walsh/Davis Joint Venture v. General Services Administration*, CBCA 1460, 11-2 BCA ¶ 34,799 (quoting *Community Heating & Plumbing Co. v. Kelso*, 987 F.2d 1575, 1581 (Fed. Cir. 1993) (citing *Winn-Senter Construction Co. v. United States*, 75 F. Supp. 255 (Ct. Cl. 1948)). "Such conduct manifests an intent that the parties never construed the release as an abandonment of plaintiff's earlier claim." *Walsh/Davis* (quoting *Community Heating & Plumbing Co.*, 987 F.2d at 1581 (quoting *A&K Plumbing & Mechanical, Inc. v. United States*, 1 Cl. Ct. 716, 723 (1983))).

Glen/Mar posits that the record demonstrates that the VA and Glen/Mar continued to consider Glen/Mar's delay claim following the execution of modification P00001 and its release. To support its argument, Glen/Mar references self-drafted meeting minutes as evidence of continued negotiations. According to Glen/Mar, the meeting minutes indicate that the parties discussed the contractor's revised master schedule submission, as well as potential delay claims related to the overall project. Glen/Mar also points to an email exchange between the VA and Glen/Mar regarding the contractor's calculation of its delay claim. Glen/Mar asserts that this particular communication further shows proof that the Government continued considering the claim well after the parties executed the release.

Pursuant to the standards set for consideration of summary judgment, we accept as true Glen/Mar's affiants' statements that Mr. Neer and/or Mr. Murphey discussed with Mr. Vankderkin the possibility that delays related to the Century Link work could be discussed upon completion of the contract. However, it is clear from the declarations and record that these discussions were held on April 25, 2018, before modification P00001 was executed. We extensively reviewed the declarations from Messrs. Brown, Vanderkin, and Mitchell, and the materials cited therein, and found them to be conclusory with regard to the schedule, meeting minutes, and emails. When we scrutinized the facts cited to in the declarations we found that those facts did not support Glen/Mar's contention that the VA engaged in negotiations on a delay claim associated with the Century Link work *after* modification P00001 was executed.

Meeting minutes submitted by Glen/Mar may show that discussions took place regarding the schedule generally, but there is no indication that Glen/Mar specifically raised delays associated with the Century Link work. It appears from the meeting minutes and contemporaneous record that submissions were more in the nature of apprising the VA when the contract would be complete as opposed to notifying the VA of excusable or compensable delays. It was clear that during the contract, Glen/Mar was behind schedule and would not complete on time. However, there is no indication, even when Glen/Mar submitted schedule updates, that it claimed any delays were attributable to the VA. The email exchanges are equally unhelpful. Glen/Mar points to email exchanges with Mr. Neer following the submission of its REA. According to Glen/Mar, the exchanges are evidence that the parties continued to negotiate the claim. However, the contemporaneous communication shows the VA merely delaying a response to the REA, and then asking how Glen/Mar calculated the claim within the broad language of the modification and its release. As a result, the emails offer no proof that the VA actively considered granting additional time or damages or otherwise negotiated with Glen/Mar regarding the Century Link work.

We draw no inference, as Glen/Mar would have us, that there was a VA-caused delay, simply because the VA does not appear to have threatened Glen/Mar with default because it was behind schedule.

There are no contemporaneous documents indicating that there were negotiations associated with Century Link delays. Prior to the execution of modification P00001, *potential delays* associated with the the Century Link work were raised, with the VA putting off any discussion. That there were negotiations is only found in the conclusory declarations of Messrs. Vanderkin, Mitchell, and Brown. The record does not support a finding that negotiations took place. Instead, it shows that the VA was well aware of the release contained in modification P00001. Nothing Glen/Mar has argued or provided the Board is sufficient to create material facts in dispute, particularly in light of the unambiguous language of the modification itself. As such, the release stands, and Glen/Mar is barred from asserting its claim associated with the Century Link work.

Decision

For the foregoing reasons, respondent's motion for summary judgment is granted, and the appeal is **DENIED**.

Patricia J. Sheridan
PATRICIA J. SHERIDAN
Board Judge

We concur:

Erica S. Beardsley
ERICA S. BEARDSLEY
Board Judge

Catherine B. Hyatt
CATHERINE B. HYATT
Board Judge