

APPEAL OF: :
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JOHNSON MANAGEMENT GROUP CFC, : HUDBCA Nos. 96-C-132-C15
INC., : and 97-C-109-C2
 :
Appellant :
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Contract No. H04C9407936000 :
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Myles E. Eastwood, Esq. For the Appellant
6445 Powers Ferry Road, NW
Suite 215
Atlanta, GA 30339-2909

Jud McNatt, Esq. For the Government
Office of Counsel
HUD Georgia State Office
Five Points Plaza Building
3rd Floor
Atlanta, GA 30303-3388

RULING ON APPELLANT'S MOTION FOR
RECONSIDERATION

September 20, 2000

Background

On August 4, 1999, the Board issued a decision in the above-consolidated cases, denying Appellant's appeal of the termination of Contract No. H04C9407936000 for default, and granting in part and denying in part Appellant's monetary claims. The Board also held that the amounts due Appellant (also referred to as "JMG") shall be offset against the unliquidated balance of the advance payments owed to the Government by Appellant. This Board now considers Appellant's Motion for Reconsideration.

Appellant seeks reconsideration for the following reasons: 1) The inspection reports, not produced until ten days before the hearing and after the close of discovery, should have been precluded from evidence and Appellant's Motion in Limine should have been granted; 2) even if the inspection reports were properly admitted into evidence, none of the inspectors returned to the inspected property to see whether the work had been corrected during the balance of the two-week invoice period; 3) the March/April/May 1996 invoice submissions were pursuant to oral modification and/or constructive change to the invoice requirements of the contract; 4) JMG's contract was improperly terminated for default; 5) JMG's equipment was properly not returned because a) the contract was improperly terminated for default and the Government had no lien or claim for value on the equipment, and b) under a "plain meaning" reading of the contract, the contracting officer's subjective intent and understanding of the word "liquidated" is immaterial and the contract language was approved by HUD's legal department prior to execution; and 6) Appellant should have prevailed on all claims for unpaid invoices without offset, including its insurance reimbursement claim, its management fees claim, and its lawn maintenance claim.

The Government opposes Appellant's Motion for Reconsideration for the following reasons: 1) the Board did not err in admitting the inspection reports that Appellant sought to exclude through a Motion in Limine filed on the first day of the hearing, which the Board denied, nor was Appellant not unduly prejudiced by the admission of the inspection reports; 2) Appellant has waived its right to raise the issue of oral modification or constructive change concerning the March, April and May 1996 invoices because Appellant failed to raise the issue at the hearing; 3) JMG's contract was riot improperly terminated for default and Appellant has failed to identify any errors of fact or law with respect to the Board's ruling on the termination for default; 4) Appellant's arguments as to why the equipment did not have to be returned to the Government are incorrect as a matter of law and do not address that part of the Board's decision finding certain contract language to be void ab initio; and 5) Appellant has failed to show errors of fact or law in the Board's decision that would support Appellant's monetary claims that were denied by the Board.

Discussion

As a general matter of law, a motion for reconsideration will not be granted if the decision to be reconsidered is adequately supported by the evidence and is not otherwise erroneous as a matter of fact or law. See Sage Constitution Co., ASBCA No. 34284, 90-2 BCA ¶ 22,726; Camel Manufacturing Company, ASBCA No. 41231, 91-2 BCA ¶23,208. If the ground for reconsideration will not result in a change in the effect of the decision, the motion will be denied. Mastic-Tar Co. Inc., ASBCA No. 7272, 1962 BCA ¶3429.

The Inspection Reports

A. Admissibility of June and July, 1996, Inspection Reports

Appellant filed a Motion in Limine on the first day of the hearing, asking the Board to exclude three categories of Government exhibits, including Exhibits C and D to the contracting officer's third final decision dated May 21, 1997, consisting of reports of inspections performed on properties within Appellant's contract inventory both shortly before and after the termination of Appellant's contract for default on July 8, 1996. Exhibit C is a composite exhibit of reports of inspections performed by HUD personnel on June 24 and June 28, 1996. Exhibit D is a composite exhibit of reports of inspections performed by the replacement contractors on July 10-11, 1996.

Appellant sought to have these documents excluded from evidence because the Government had failed to produce them in response to Appellant's First Request for Production of Documents dated August 16, 1996, which specifically requested at item 20 "All reports of inspections of any properties that were in JMG's territory." HUD did not produce the inspection reports contained in Exhibits C and T) to the contracting officer's final decision dated May 21, 1997, in response to Appellant's August 16, 1996 First Request for Production of Documents. The inspection reports did exist in August, 1996, but were not relied upon by the contracting officer when he terminated Appellant's contract for default. However, he did rely upon them in considering Appellant's monetary claim, particularly the version of Appellant's claim that was certified. Appellant's counsel saw these inspection reports for the first time on May 22, 1997, as attachments to the contracting officer's third final decision dated May 21, 1997, in which the contracting officer ruled on certain of Appellant's claims for the first time, but those claims had previously been appealed to the

Board in these two cases as deemed denials. The consolidated hearing in the two cases was scheduled for June 22, 1997, approximately 10 days later.

In arguing against Appellant's Motion in Limine at the hearing, Government counsel stated that he made all of HUD's files available to Appellant's counsel for inspection and copying, and Appellant accepted that opportunity. (Tr. Vol. 1 at 215). In arguing the Motion in Limine, Appellant's counsel did not contend that Government counsel was acting in bad faith by failing to produce the inspection reports. Rather, Appellant's counsel was concerned about possible prejudice to his client because counsel had only received them ten days before. He was unable to identify any prejudice to his client at the hearing because he had not "had time to study the dadgum things." (Tr. Vol. 1 at 230.) Government counsel represented that he was unaware of the existence of the inspections performed by the replacement contractors until a few weeks before the hearing, and he did not think that he had a duty at that time to supplement the Government's response to Appellant's discovery request dated the prior August. (Tr. Vol. 1 at 191, 218-220).

The Board denied the Motion in Limine as to the inspection reports, there being no evidence of bad faith on the part of the Government, and because counsel for Appellant was unable to identify prejudice to Appellant that could only be remedied by granting the Motion in Limine. The Government did not violate any order of the Board by its failure to produce the inspection reports during discovery. The Board's Rules only address sanctions for a party's failure or refusal to obey an order of the Board, and any sanction applied is to be "necessary to the just and expeditious conduct or dismissal of the appeal." Rule 33, "Sanctions," 24 C.F.R. Part 20. The Board observed that Appellant's counsel had already had ten days to review and digest the inspection reports, and thus a complete prohibition against admitting them into evidence was not as appropriate as crafting another remedy to protect Appellant from undue prejudice. (Tr. Vol. 2 at 9)

Appellant's counsel was given an opportunity to request additional time to examine and evaluate the inspection reports, and even to continue the hearing, should Appellant wish to present additional evidence to rebut the inspection reports, if necessary. (Tr. Vol. 1 at 221, Vol. 2 at 8-11). Appellant's counsel never exercised these options, either prior to or after the denial of the Motion in Limine.

Procedural matters related to discovery and evidentiary issues fall with the sound discretion of the trier of fact. *Curtin v. Office of Personnel Management*, 846 F.2d 1373 (Fed. Cir. 1988). The Federal Rules of Civil Procedure are not incorporated by reference into the Board's Rules, and compliance with them is not required. Many of the cases cited by Appellant in its Motion for Reconsideration are based on the Federal Rules of Civil Procedure, and are therefore not applicable to this case. Furthermore, the Government in this case did not violate an order of the Board directing its compliance with Appellant's discovery request, nor was there bad faith in the Government's failure to provide the inspection reports, as distinguished from the cases cited by Appellant that were issued by other Boards of Contract Appeals.

The Board did not abuse its discretion or err by denying Appellant's Motion in Limine, and it did not err in admitting into evidence Exhibits C and D to the contracting officer's final decision dated May 21, 1997. In any event, the Board based no findings of fact in its decision solely on these inspection reports, and used them only to quantify Appellant's monetary claim for the last week of its performance before the contract was terminated. (Board's

Decision of August 4, 1999 at p. 23, on Appellant's Invoice No. 68).

B. The Contract Requirements Related to the
Probative Value of All Inspection Reports

Appellant contends that, because none of the inspectors returned to see whether the conditions at the inspected properties had been corrected during the balance of the relevant two-week invoice period, none of the inspection reports relied upon by the Government in these cases are proof of performance failures by Appellant.

Service Item 15 of the contract required Appellant to ensure that grass and shrubbery were to be cut in a professional looking manner" and "properties are maintained in a presentable condition at all times." (Emphasis added.) (AF Tab 2.1). Lawn maintenance was to be accomplished in accordance with Exhibit 6B to Service Item 15 of the contract. It states that "mowing shall be performed approximately every fourteen (14) days but not more than twice (2) in a one month period from April through September and it shall be performed from October through March on an as-needed basis." (AF Tab 2.1).

Appellant construes Exhibit 6B to Service Item 15 of the contract as requiring lawn maintenance services at any time within a two-week period twice a month. Appellant effectively contends that if it performed lawn maintenance services on a property at any time during the first two weeks of a month, and at any time during the second two weeks of that same month, it would be in compliance with the contract requirements. If the Board were to adopt Appellant's interpretation of Exhibit 6B to Service Item 15, Appellant could service a property on the first day of a month and on the last day of the month, performing no services for up to 29 days, and still be in compliance with the contract requirements. That interpretation would also mean that the contract had no time of service requirements between months, meaning a property could be serviced on the twenty-sixth day of a month and then serviced again on the first day of the following month, and be in compliance with the contract.

Appellant's interpretation of the contract requirements for lawn maintenance effectively ignores two critically important provisions: 1) mowing shall be performed approximately every fourteen days, and 2) properties are to be maintained in a presentable condition. at all times. Furthermore, Appellant's interpretation of the contract defeats the purpose of the lawn maintenance portion of the contract to have all properties be in presentable condition at all times, and the way to accomplish that purpose by performing lawn maintenance services approximately every 14 days.

The invoices prepared by the lawn maintenance subcontractors list the date that lawn services were performed on each property. This is the most reliable evidence of when services were performed, or at least were claimed to have been performed. The subcontractors' invoices in evidence show routine lawn maintenance service being performed on a specific property as frequently as five days between services and as infrequently as 24 days between services within the same month, and as long as 30 days between services from March to April, 1996. Lawn servicing was required to be performed approximately every 14 days in April, and Appellant's own invoices show this was not done. Appellant was never concerned about the exact date when lawns were cut, even though dates of service were the measure required by the contract for when the next service was to be performed. (Tr. Vol. 3 at 54, 56, 70-71.)

The comparison of the dates of services listed on the subcontractor invoices with the lawn maintenance conditions found by inspectors at those properties during inspections is compelling proof that lawn maintenance services did not comply with either the letter or spirit of the contract. The conditions found by the inspectors were so egregious that the Board had to conclude from this evidence that the work for which Appellant was billing HUD through lawn maintenance invoices could not have been acceptable at any time during the approximately fourteen days before the inspections were made because the conditions found were far too extreme to have occurred within approximately fourteen days of the last lawn service, which is what the contract requires.

The Board did not err in fully considering the inspection reports for April 25, 1996 and May 10-11, 1996 to find that Appellant was in default on lawn maintenance services. It is immaterial that the inspectors did not return to the properties a few days later to see if any work had been performed. That was not required of them. The inspections in evidence are a "snapshot" of Appellant's contract performance. They show that Appellant failed to assure contract compliance with the lawn maintenance contract requirements that lawn maintenance services were performed on each property approximately every fourteen days, and that each property had to be in a presentable condition at all times.

Whether the March/April/May 1996 Invoice Submissions
Were Pursuant to Oral Modification and/or Constructive
Change to the Invoice Requirements of the Contract.

This issue was not raised at the hearing and is therefore inappropriate for reconsideration. Al-Henco Enterprises, GSBICA No. 9673, 91-1 BCA ¶ 23,503. However, we observe that the contract requirements were never changed by the contracting officer. HUD personnel were merely trying to get Appellant to present to HUD undoctored and unchanged copies of the subcontractor's invoices so that HUD could determine their validity.

The Propriety of the Termination for Default

Appellant's Motion for Reconsideration only addresses the issue of deficient lawn maintenance as the basis for the Board's decision upholding the termination for default. However, the Board found that the termination for default was fully supported, based on the submission of invoices containing so many errors that it was not possible to determine what work was really done. The Board found that there were many unallowable charges on the invoices for work allegedly performed on properties before they were assigned to Appellant and after properties were sold and no longer in the contract inventory. Throughout the entire cure period, JMG failed to submit original, signed, accurate and acceptable subcontractor invoices.

The Board's decision makes clear that Appellant's repeated failure to submit subcontractor invoices in compliance with the terms of the contract was a sufficient ground on which to terminate the contract for default because of its impact on administration of the contract. Thus, Appellant's reliance upon the probative value of the inspection reports is not a valid basis for reversing the Board's decision to uphold the termination for default, and we find the Motion for Reconsideration on the propriety of the termination to be unpersuasive as a matter of fact and law.

Unrepaid Advance Payment to Appellant and the

Return of Equipment to Satisfy Government Lien

Appellant contends that because the contract was improperly terminated for default, the Government has no lien or claim for value on the equipment.

The Board concluded in its Decision that the contract was properly terminated for default. However, even if the Board had concluded that it was not properly terminated for default, the default clause of the contract, incorporated by reference, provides that if the contract was improperly terminated for default, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government. Pursuant to the Termination for Convenience of the Government (Services) (short form) clause, incorporated into the contract by reference, Appellant would not have been entitled to retain the equipment if the contract had been converted to a termination for convenience because the Government had a lien interest in it at all times arising out of advance payments made to Appellant that were not repaid or otherwise satisfied or discharged.

The legal principle that the Board applied to the issue of the equipment had nothing to do with contract interpretation, the understanding of the parties, or the plain language of Contract Modification Number 1. Rather, the Board determined that the contracting officer lacked the legal authority to provide, for the liquidation of advance payments upon their withdrawal without preserving a Government lien until the advance payments were actually repaid or the debt otherwise discharged. To the extent that Norma Cannon, the first contracting officer, attempted to do so, or the contract so provided, such a contract provision was void ab initio, and the Advance Payments clause of the contract applies.

Appellant has failed to show in its Motion for Reconsideration that the Board erred in its ruling on the advance payments and its legal conclusion that the Government has a lien interest in the equipment purchased with funds advanced to Appellant by the Government.

Insurance Reimbursement Claim

The Board's Decision dated August 4, 1999, did not address whether the contract was orally modified or constructively changed to reimburse Appellant for subcontractor insurance that it had purchased. These issues were raised only indirectly by Appellant at the hearing as additional legal bases for awarding Appellant reimbursement for subcontractor insurance that it had purchased. The Board held that the proposed contract modification by which such reimbursement would be accomplished was never signed by Appellant, and thus, never became part of the contract which otherwise forbade reimbursement for insurance. Appellant asserts that, although proposed Modification No. 8, which included a subcontractor insurance reimbursement clause, was not signed by the parties, the contracting officer and JMG negotiated an express agreement that JMG should buy liability insurance to cover its subcontractors and that HUD would reimburse JMG for that particular insurance. Appellant contends that this oral agreement constitutes an oral modification and/or a constructive change to the original contract.

The insurance clause in the original contract provides that the costs for insurance required by the contract and other forms of insurance that may be purchased by the contractor for its protection will not be reimbursed by HUD.

(AF Vol. 1, Tab 2.1, p. 33). Chattman Johnson, Jr., President of JMG, testified that although JMG was aware that there were some types of insurance required under the contract, JMG "brought it to HUD's attention, [that] when vendors or individuals are out at the property, if they're hurt, there was really nothing to cover it." (Tr. Vol. 4 at 184 thru 4-185). Johnson also testified that Cannon, the initial contracting officer, told him that she wanted all REAMS to purchase an insurance policy that would cover subcontractors and that, in response to Cannon's statement, JMG purchased the insurance. (Tr. Vol. 4 at 185). JMG purchased the insurance in October 1995 for coverage through October 1996, and submitted an invoice to HUD for reimbursement. Invoice No. 58 requested reimbursement for "Additional Liability Coverage" as well as "G&A and Profit" on that insurance purchased. (JE Vol. 1, Tab 4.5, Invoice No. 58)

Cannon testified that she had agreed to add a provision to the contract which would provide for JMG to be reimbursed for any subcontractor insurance costs that it incurred. (Tr. Vol. 1 at 73 thru 1-74). Michael Swan, the second contracting officer, also testified that Cannon orally agreed to a modification to cover reimbursement for that insurance. (Tr. Vol. 2 at 25). However, Cannon did not actually draft proposed Modification No. 8 until February 1996, four months after JMG purchased the insurance based on Cannon's oral agreement to reimburse JMG. (SAF Tab 3.14, Letter to Chattman Johnson, Jr. from Michael Swan dated Nov. 22, 1996). Proposed Modification No. 8 states that "the contract pricing structure . . . is modified to add . . . B-2.K. Insurance Reimbursement for Subcontractor Liability." (SAF Tab 3.14, attachment, p. 3). It further states that the contractor may submit invoices for this expense at the time the expense is incurred. The proposed modification then sets forth the reimbursement schedule for the next four years, including a reimbursement totaling \$1,308.00 for the first year. Proposed Modification No. 8 would not have allowed JMG to be reimbursed for general and administrative overhead on the cost of the insurance. The amounts listed in the proposed modification were strictly for reimbursement of the cost of the insurance. JMG did not sign proposed Modification No. 8, which was a composite modification that included many contract items in addition to the clause for reimbursement for subcontractor insurance.

Appellant, as the party asserting an oral modification of the contract, bears the burden of proof. Norcoast Constructors, Inc. v. United States, 448 F.2d 1400, 1402 (Ct. Cl. 1971). The Court of Appeals for the Federal Circuit has held that an oral modification of a written contract, which may be modified only by bilateral written agreement, is ineffective. Mil-Spec Contractors, Inc. v. United States, 835 F.2d 865, 869 (Fed. Cir. 1987); see also SCM Corp. v. United States, 595 F.2d 595, 597 (Ct. Cl. 1979), (holding that "[o]ral understandings which contemplate the finalization of the legal obligations in a written form are not contracts in themselves."). In both SCM and Mil-Spec, the relevant regulations required modifications to be in writing, and the contractors, although for different reasons, did not sign the written modifications. A contracting officer may not exceed his or her authority by disregarding the relevant regulations. See Cooper Realty Co. v. United States, 36 Fed. Cl. 284, 288-89 (Fed. Cl. 1996). Because the relevant regulations required contractual modifications to be in writing, the contracting officers did not have authority to bind the government, to an oral modification, and, as a result, the oral modifications were ineffective. See Mil-Spec, 835 F.2d at 869; SCM, 595 F.2d at 598.

Even though the Federal Circuit and boards of contract appeals have found that there may be limited exceptions to the Mil-Spec rule, the instant matter does not fall under any of the exceptions. See Adams Construction Co., Inc., VARCA No. 4669, 97-1 BCA ¶ 28,801 (1997) (citing Texas Instruments, Inc. v. United States, 922 F.2d 810, 814 (Fed. Cir. 1990) and Daly Construction, Inc. v. Garrett, 5 F.3d 520 (Fed. Cir. 1993)). See also Glory House of Sioux Falls v. United States, 5 F.3d 1505 (Fed. Cir. 1993). In this instance, Appellant was aware, or should have been aware, that the modification had to be in writing. The pertinent regulations require a modification, such as the one proposed, to be in writing and signed by both parties. See 48 C.F.R. § 43.103. "Parties are presumed to know and required to be cognizant of the governing regulations." SCM, 595 F.2d at 598.

As distinguished from the one case cited by Appellant, J.S. Alberici Construction Co., Inc. v. GSA, GSBCA No. 12386, 94-2 BCA ¶ 26,776 (1994), there is not sufficient evidence in the record, such as memoranda or other writings which set forth the specific terms of the agreement, or demonstrate a complete consideration of the issues, indicating that the parties viewed the written modification as a mere formality. Furthermore, there was not a sufficient meeting of the minds on the terms of the agreement to definitize it orally. See, Adams Construction Co., Inc., supra. The only evidence in the record of the terms contemplated by the parties to modify the existing contract is proposed Modification No. 8. Proposed Modification No. 8 states that JMG would be reimbursed \$1,308.00 for subcontractor liability insurance in the first year. JMG submitted an invoice to HUD on April 22, 1996, requesting reimbursement not only for the cost of the subcontractor insurance, but also for "G&A and Profit" on that cost, an item not contemplated in proposed Modification No. 8.

Therefore, in light of Mil-Spec, the relevant regulations, and the scant facts in the record, this Board finds that Appellant has not proven that there is an enforceable oral modification with regard to the subcontractor insurance claim.

Appellant also argues that the subcontractor insurance was purchased at the direction of Cannon, and that, as such, the oral agreement between Cannon and JMG should be deemed a constructive change to the contract. A constructive change, by definition, occurs when "... a contractor performs work beyond the contract requirements, without a formal order under the changes clause, either by an informal order of the Government or by fault of the Government." CTA Inc. v. United States, 44 Fed. Cl. 684, 696 (Fed. Cir. 1999) (citing Miller Elevator Co. v. United States, 30 Fed. Cl. 662, 678 (Fed. Cl. 1994) (internal quotations omitted)). For a proponent of a constructive change claim to prevail, the party must demonstrate two components, the change component and the order or fault component. Id. The change component is defined as work outside of the scope of the contract, while the order/fault component is defined as the reason that the contractor performed the work. Id.

In this case, the record does not support Appellant's contention that Cannon directed JMG to purchase the subcontractor insurance. The record only supports a finding that Cannon, in response to an inquiry from JMG, indicated that it would be beneficial if all REAMS purchased such insurance, not that JMG was required to do so. Moreover, there is no indication that the insurance provision in the original contract was in any way misinterpreted by Cannon, thus resulting in her requiring JMG to purchase the insurance. See J.F. Allen, 25 Cl. Ct. at 321. Absent a clear directive from the contracting officer, or a

misinterpretation of the insurance clause by her, this Board cannot find that a constructive change order to the contract occurred.

JMG's purchase of subcontractor insurance was not outside the scope of the contract. The insurance clause in the contract provides that any insurance purchased by the contractor, including other forms of insurance that may be purchased by the contractor for its protection, will not be reimbursed by HUD. (AF Vol. 1, Tab 2.1, p. 33). This clause is broad and contemplates JMG's purchase of all insurance, which would include subcontractor insurance, whether or not it was required by the contract or ordered by the contracting officer. Even if Cannon had directed JMG to purchase the subcontractor insurance, any such direction was not beyond the scope of the contract. As such, any directive given by Cannon cannot be considered a "change" under the constructive change doctrine. See CTA, 44 Fed. Cl. at 696.

In light of the above, Appellant has failed to show that, as a matter of fact or law, a constructive change to the contract had occurred.

Management Fees Claim

Appellant argues that the Board should not have reduced Appellant's management fee for July, 1996 to the pro-rata amount for July 1-8, 1996. It contends that because the contract was improperly terminated for default, Appellant should be compensated for management services for the entire month of July. The contract was properly terminated for default. However, even if the Board concluded that the contract had not been properly terminated for default, and had converted the termination for default to a termination for convenience, Appellant's contract would still have been terminated as of July 8, 1996. As such, Appellant would only have been entitled to the pro-rata share of the monthly management fee for July, 1996 which the Board found to be payable to Appellant. In the absence of persuasive evidence that Appellant is entitled to additional payment for management services, the Board finds no basis to modify its previous determination of this claim.

Lawn Maintenance Claim

Appellant contends that the Board erred in reducing certain line item claims on Appellant's lawn maintenance invoices, arguing that the Board should not have ordered any reductions on the invoices based on the inspection reports that the Board admitted into evidence as Exhibits C and D to the contracting officer's final decision dated May 21, 1997. Those inspection reports were not improperly admitted. The contracting officer relied on them in his ruling on Appellant's monetary claims, which Appellant appealed to the Board.

The Board fully considered Appellant's invoice claims, and directed the Government to pay the invoices to the extent that there was not compelling evidence that Appellant's lawn maintenance subcontractors had failed to provide acceptable lawn maintenance services on the dates for those services recorded on the invoices. The Board used the inspection reports to which Appellant objects to make its findings of entitlement and quantum on Invoice #68 only. Those inspection reports were not relevant to Invoice Nos. 52, 53, 55, 57, 59, 61, 62, 64 or 66.

The Board utilized the inspection reports dated April 25, May 10, and May 11, 1996 to reduce Appellant's invoice claims to reflect clearly unacceptable contract performance or lack of contract performance on the dates of service

listed in Appellant's Invoice Nos. 57 and 59. However, Appellant does not object to those inspection reports.

Rather, it argues that those inspection reports are not probative evidence of what work was acceptable for purposes of payment of Appellant's invoices. We disagree. The inspections made subsequent to the dates on which service is claimed by Appellant on its invoices to have been performed, and which illustrate that service on those dates was unacceptable because of the condition of the properties within the approximate two week time period after those service dates, are probative evidence of work for which Appellant invoiced that was not acceptable, and thus, not to be approved for payment. Consequently, the Board finds no basis to modify its previous determination of Appellant's invoice claims.

CONCLUSION

For the foregoing reasons, the Board denies Appellant's Motion for Reconsideration in its entirety.

Jean S. Cooper
Administrative Judge

Concurrence:

David T. Anderson
Administrative Judge

Jerome M. Drummond
Administrative Judge

September 20, 2000