

Westlaw

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1997 WL 276175 (H.U.D.B.C.A. 97-2 BCA P 28,993, HUDBCA No. 96-A-113-C4

HUDBCA

Appeal of: MASCO, INC., Appellant.

Contract No. H03C95003400000

May 19, 1997

For the Appellant

Alvins D. Waller

President

MASCO, Inc.

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For the Government

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Washington, D.C. 20410

DECISION BY ADMINISTRATIVE JUDGE DAVID T. ANDERSON

Statement of the Case

On January 11, 1996 MASCO, Inc. ("Appellant" or "MASCO") filed a notice of appeal of a final decision of a contracting officer, dated October 13, 1995, partially terminating Contract No. H03C95003400000 for default. The default was based on Appellant's failure to perform direct endorsement technical reviews in accordance with the contract's Statement of Work. Appellant contends that the Government's termination of the contract for default is not justified because the Government was partially at fault in that it contributed to Appellant's deficient performance by failing to provide Appellant with eight hours of training as required under the Statement of Work.

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Findings of Fact

1. On November 28, 1994, the United States Department of Housing and Urban Development ("HUD," "Department," or "Government") awarded to Appellant Contract No. H03C95003400000, a firm-fixed price, indefinite quantity contract for mortgage credit technical reviews and insurance endorsement processing services for the HUD Philadelphia, Pennsylvania field office ("field office," or "area office"). The performance period of the contract was from December 1, 1994 through November 30, 1995, with options for two additional years of performance. (Appeal File ("AF") 2.1; Stipulation of Fact, Transcript ("Tr.") 5.)

2. The contract incorporated by reference the Default (Fixed Price Supply and Services) (Apr. 1984) clause set forth at Federal Acquisition Regulation ("FAR") 52.249-8;

(a) (1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to--

(1) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a) (2) below); or

(iii) Perform any of the other provision of this contract (but see subparagraph (a) (2) below).

(2) The Government's right to terminate this contract under subdivisions (1) (ii) and (1) (iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any

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tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may required the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

FAR 52.249-8 (Apr. 1984); {AF 2.1.}

3. The contract's Mortgage Credit Technical Reviews Statement of Work set forth Appellant's performance requirements as follows:

1. a) Checking for compliance with the statutory and regulatory requirements of the appropriate Section of the National Housing Act.

b) Verifying the calculation of the maximum mortgage amount under the appropriate section of the National Housing Act and for the proposed occupancy.

c) Reviewing all the credit documents of the application.

d) Reviewing the sales contract and addendums for sales price and any concessions or contributions, including Attachment A, where appropriate.

e) Reviewing and verifying the computations on the Form-92700 for 203(k) cases, Uniform Residential Loan Application (URLA) and Form HUD-92900-A, Form HUD-92900-WS, and any program specific worksheets for accuracy and compliance with outstanding instructions.

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f) Analyzing employment data, effective income, ratio compliance, credit history, and source of funds of all applicants.

g) Determining settlement requirements and ascertaining that the minimum cash investment requirement has been met.

h) Reviewing the Form HUD-54113, Underwriter Certification, for consistency with Direct Endorsement (DE) requirements.

i) Reviewing the Form HUD-1, Settlement Statement or like closing statement, to determine if the closing charges are reasonable for the area and are an accurate reflection of the costs necessary to close the mortgage. Determine that the borrower has not been charged unallowable closing costs. Determine that the sales price and mortgage amount on the Form HUD-1 reflect the amount shown on the Form HUD-92900-WS.

j) Verifying that all Firm Commitment (Mortgage Credit/DE Approval for HUD/FHA Loan), and HUD Form 92900-A conditions have been met.

k) The contractor shall submit the fully completed and signed Direct Endorsement Post-Endorsement Technical Review-Review of Underwriter/Mortgage Credit Checklist (HUD-54118-MCR) and the Mortgage Finance Fraud Warning Signals Checklist. (See Section J, Attachments 3 & 4). "Fair" and "Poor" items must be commented upon on the HUD-54118-MCR as explained in the following paragraph.

1) Completing the mortgage credit section of Form HUD-54118, Underwriter's Report, as applicable. The contractor shall evaluate the work performed and enter the rating on the form. Ratings are "good", no deficiencies, "fair", deficiencies of a minor nature that do not change the eligibility determination of the property, mortgagor, mortgage amount, or the term, and "poor" (if any one or combination of items significantly increases the risk of default), more serious deficiencies and/or violations of statutory and regulatory requirements which result in a significant mortgage risk.

In assessing the underwriter during the detailed review, the contractor should keep in mind that the DE Lender is expected to make a judgmental underwriting decision based on all of the facts of the application.

"Fair" or "poor" ratings on the Form HUD-54118 require a written explanation from the contractor. The comments must provide the DE underwriter with direction and constructive criticism so that their performance can improve.

2. The contractor shall attend a training session (not to exceed 8 hours) given by the Field Office on Mortgage Credit issues and the technical review procedures.

3. Acceptable contract performance: all reviews are completed and returned to the Field Office within 3 working days of receipt; the Form HUD- 54118 is completed and signed by the contractor, and the information is clear, legible, and provides concise instructions for improvement to the underwriter.

4. Failure to perform in accordance with the terms of the contract may result in

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termination of the contract.

(AF 2.1.)

4. The Mortgage Credit Technical Reviews Required Technical Qualifications section of the contract required the following pre-award qualifications of the successful offeror:

1. The offeror must have approximately three years of specialized experience in the examination and analysis of financial and credit risk factors involved in the granting of loans.

2. The offeror must be thoroughly familiar with basic HUD underwriting guidelines and procedures including:

a) Determining the maximum mortgage for the specified HUD program;

b) Estimating settlement requirements and minimum cash investment requirements;

c) Analyzing credit history; and

d) Calculating effective income for both wage or salaried employees and self-employed borrowers.

3. The offeror must be knowledgeable about HUD's Direct Endorsement (DE) Program, with particular emphasis on mortgage credit underwriting procedures.

4. The offeror must be thoroughly familiar with the following HUD underwriting forms:

a) Uniform Residential Loan Application (URLA) and Form HUD-92900-A

b) HUD-92900-WS, Mortgage Credit Analysis Worksheet

c) Request for Verification of Deposit

d) Request for Verification of Employment

e) Underwriter Certification, HUD Form- 54113

f) Other program specific forms

5. The offeror must also be thoroughly familiar with the following general underwriting and mortgage documents:

a) Attachment A (Mortgagee Letter 86-15 and 88-37)

b) Credit reports and supporting statements

c) Disclosure Statements

d) Financial Statements

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- e) Form HUD-1, Settlement Statement
- f) IRS Tax Returns
- g) Sales Contract and Addenduras
- h) Schedule of Real Estate Owned
- i) Other underwriting documents required by HUD

(AF 2.1.)

5. If a deficiency was discovered during a technical review, at a minimum, the contractor was required to rate the Direct Endorsement Underwriter "fair," and, depending on the seriousness of the deficiency, the contractor could rate the underwriter "poor." If more than one deficiency was discovered in a technical review, the contractor was required to report all of the deficiencies in order to prevent the underwriter from making the same mistakes in the future. (AF 2.1; Tr. 29, 31-32, 49.)

6. Appellant was provided with all of the HUD underwriting guidelines, including Mortgagee Letters 95-1 through 95-7, and the Mortgage Credit Handbook 4155.1, Revision 4, which were in effect at the time of the contract. (Tr. 37, 67-68, 77, 79.)

7. Anthony Sexauer, Senior Underwriter and Government Technical Representative on this contract, whose duties were to provide necessary training, to monitor the contract, and to ensure that vouchers were paid in a timely manner, testified that he held two meetings, totalling three hours, with **MASCO** which were intended to provide training on how to perform underwriting reviews for HUD. Additionally, Gerard Glavey, the field office's Chief of the Single Family Production Branch, stated that he conducted a two-hour training session with **MASCO** in May, 1995. (Tr. 48-49, 65-66, 74, 79, 88-89.)

8. Alvins D. Waller, President of **MASCO**, Inc., attended the two-hour meeting conducted by Sexauer in December, 1994, which covered instruction on endorsements, technical reviews for the field office, and other concerns that the field office had developed over the years, i.e., "things that **MASCO** should be looking for and commenting upon." (Tr. 74-75.)

9. Sexauer conducted a second meeting which lasted one hour in late January, 1995, which he considered to be for purposes of training. Waller attended this meeting as well. This meeting was considered necessary because the field office noticed deficiencies in the reviews that had been conducted by Appellant, although, at the time, they considered them to be relatively minor. The January, 1995 meeting also covered instruction on credit reports, delinquencies, delinquency ratios, and the need for comments if certain delinquency ratios were exceeded. Waller did not bring anyone from his underwriting staff to either of the two sessions conducted by Sexauer, even though **MASCO** had three underwriters on its staff at the time. (Tr. 74-76, 102-103.)

10. Waller's testimony indicates that he considered the two meetings with Sexauer

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to be training session. He testified that he did not bring an underwriter from his staff with him to the first two meetings scheduled by Sexauer because:

[W]e had been awarded mortgage credit technical reviews for other field offices, and . . . after attending a couple of them with my staff, . . . I made a decision that if the mortgage credit technical reviews would be the same in all of the field offices, . . . I didn't think it was necessary because, after attending one in D.C. and one in Richmond, and they were very similar, I didn't feel like it was necessary because an underwriter could review the case for any jurisdiction. So therefore, . . . I made a business decision that I didn't think it was necessary to go to another training session because underwriting was underwriting." (emphasis supplied).

(Tr. 102-103.)

11. On March 10, 1995, the HUD contracting officer, Jane D. Atkinson, received written notification from the Single-Family Production Branch of the field office that the quality of Appellant's performance on the mortgage credit technical reviews was deficient. Specifically, the notification stated that Appellant failed to accurately rate the DE underwriters; failed to provide comments to the DE underwriters when appropriate; failed to notice or mention discrepancies and omissions when reviewing case files; and failed to meet the time standards of the contract. (AF 4.1; Tr. 10-11.)

12. On March 16, 1995, Atkinson issued a cure notice to Appellant for failure to deliver timely and technically acceptable services, citing to both the Insurance Endorsement Processing and Mortgage Credit Technical Review sections of the contract, and for other deficiencies which did not meet the requirements of the Statement of Work. Examples of the types of deficiencies listed in the cure notice included: (1) failing to comment when the front-end ratios were high; (2) failing to note inconsistencies between the base pay reflected on Mortgage Credit (MC) worksheets and the Verification Of Employment's (VOE's); (3) failing to comment even though credit report indicated a number of slow-pay accounts; (4) failing to comment when excessive closing costs were used on the MC Worksheet; (5) failing to properly apply the maximum mortgage limitation on closing costs; (6) failing to comment on the fact that the disclosure signature release was not attached; (7) failing to comment on the fact that Attachment A was missing from file; (8) failing to note that the MC Worksheet was missing from file; (9) failing to note that the Agreement of Sale was missing; (10) failing to comment on the fact that VOE's and Verification Of Deposit's fVOD's were not signed by the lender; (11) failing to comment on each and every deficiency found in each case file; and numerous other deficiencies. (AF 3.1, 4.1; Tr. 10-12, 32-34, 37-39.)

13. Appellant responded to the March 16, 1995 cure notice on March 31, 1996. In a number of cases, **MASCO's** response simply stated: "The problem is duly noted and **MASCO** will ensure that there are no repeats of this problem in the future." However, the field office was concerned that Appellant did not understand why the deficiencies had occurred in the first place, and that the response did not contain adequate information as to how Appellant was going to "ensure" that the deficiencies would not occur in the future. (AF 3.4; Tr. 13, 40-44.)

14. By letter dated March 24, 1995, Appellant requested that it be allowed to use

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its employees working on other HUD contracts to process the Philadelphia office's contract. In response to Appellant's request, Atkinson sent a letter dated March 28, 1995 to Appellant denying Appellant's request and setting forth her continuing concern regarding the departures of key personnel and understaffing. (AF 3.2, 3.3)

15. Following the March 16, 1995 cure notice, a third meeting was scheduled and conducted by Glavey in May, 1995. Waller and Laurence Richardson, **MASCO's** underwriter, along with Glavey, Sexauer and the mortgage credit underwriters staff of the HUD field office attended this session. Glavey testified: "The subject of the training was to go over the previously issued cure notice and all of the problems brought out on that cure notice, . . . underwriting procedures, and [Appellant's] concerns with [the field office's underwriting] policies, and so forth." Glavey stated that at the meeting:

[t]he cure notice that had been previously issued was discussed in depth, all the issues brought out, what our expectations were as a direct endorsement technical reviewer, to list all the deficiencies when there's fails and poors; the purpose, why it's so important to do such. It gave them the opportunity to ask questions of us on how we interpreted things. It was a very positive meeting and we were very much impressed with Mr. Richardson, who talked our language, underwriting, and it was quite obvious that he was an underwriter and that he appeared to be a qualified underwriter, and we were hopeful that our reviews would be improved as a result of the meeting and by Mr. Richardson performing the reviews in the future.

(Tr. 44-49, 66.)

16. Glavey stated that, while a meeting is not necessarily commensurate with training, "these [meetings] were designed for training purposes, . . . [and that a] training session does not have to be formalized; it does not have to be set up where we hand out documents, where we do a slide presentation, where we provide a lecture." (Tr. 67, 88.)

17. After the May 1995 session, the field office noticed improvements in the timeliness and the quality of Appellant's work. On May 8, 1995, Atkinson sent a letter to Appellant lifting the March 16, 1995 cure notice. Atkinson testified that the cure notice was lifted because:

Mr. Waller . . . brought into our office, an underwriter [Laurence Richardson] to meet with the technical staff who appeared to understand underwriting. Our technical staff was comfortable that this man would be able to do this work, and, therefore, basically, to give Mr. Waller the benefit of the doubt and get him out from under this cure notice, we lifted it on the basis that we would continue to monitor the work, as we always do, and that this underwriter appeared to be adequate to do the work.

Atkinson believed that Appellant's underwriters' mortgage credit technical reviews would improve as a result of the May training session. (AF 3.6; Tr. 13-14.)

18. On August 30, 1995, Atkinson issued a second cure notice to Appellant regarding the Mortgage Credit Technical Reviews portion of the contract, notifying Appellant that the quality of work had once again substantially deteriorated. The

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area office reviewed approximately 125 cases recently completed by Appellant, and once again, found numerous deficiencies in the work similar to those listed in the first cure notice and discussed in prior training sessions with Appellant. (AF 3.7; Tr. 16, 83-84.)

19. Appellant responded to the August 30, 1995 cure notice on September 11, 1995. Again, **MASCO's** basic response to the cited deficiencies was: "The problem is duly noted and **MASCO** will ensure that there are no repeats of this problem in the future." The field office remained concerned that Appellant's response to the cure notice "did not thoroughly address [its] concerns as to how this work was going to be done properly," and did not provide any basis for them to believe that these deficiencies would not recur. Appellant also stated in its September 11, 1995 response: "We'll use the Statement of Work. We'll do it right this time." Atkinson believed this to be an insufficient response to the second cure notice. (AF 3.8; Tr. 16-18, 51-53.)

20. On September 21, 1995, Atkinson issued a ten-day show cause notice because she remained "[un]satisfied . . . with . . . Waller's continuing performance [and felt that] the problem had not been cured" (AF 3.9; Tr. 18.)

21. Appellant responded to the show cause letter on October 6, 1995. Appellant's response did not allay Atkinson's concerns because she believed that Appellant did not "show us cause why [its] failure to perform was without [its] fault or negligence and beyond [its] control." (AF 3.11; Tr. 20-21.)

22. On October 13, 1995, Atkinson issued a final decision terminating the Mortgage Credit Technical Reviews part of Appellant's contract for failure to provide quality work pursuant to FAR 52.249- 8. The Insurance Endorsement Processing portion of the contract remained in effect. (AF 1.1, 2.4; Stipulation of Fact, Tr. 5, 21-22.)

23. Appellant does not dispute the existence of the deficiencies that led to the partial termination of the contract for default. With respect to the training provision in the contract, Waller believed that Appellant would get an eight-hour training session. Waller did not consider the three meetings with HUD staff, which HUD considered training sessions, to be the training referred to in the contract. (Tr. 115-117, 127-128, **131.**)

24. Prior to the partial termination for default, Appellant never complained to Atkinson or to personnel in the field office about insufficient training in any of its responses to the cure notices or the show-cause notice. (Tr. 111.)

Discussion

The Government may terminate a contract completely or partially for default if the contractor fails to (a) make delivery of the supplies or perform the services within the time specified in the contract, (b) perform any other provision of the contract, or (c) make progress and that failure endangers performance of the contract. Federal Acquisition Regulation (FAR) 49.402-1. However, a termination for default is a drastic action which is only to be imposed for good cause and

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upon solid evidence. OFEGRO, HUDBCA Nos. 88-3410- C7, 89-4469-C7, 91-3 BCA ^ 24,206, citing J.D. Hedin Construction Co. v. United States, 408 F.2d 424 (Ct. Cl. 1969) . The consequences of a termination for default include contractor liability for excess costs of reprocurement and poor past performance ratings which may negatively impact future award decisions regarding the contractor. FAR 49.402-2, 52.249-8. A termination for default is a form of forfeiture which is not looked upon favorably. D.W. Sandau Dredging, ENGBCA No. 5812, 96-1 BCA f 28,064. Because of the serious consequences of a termination for default, the Government bears the burden of justifying its action when it terminates a contractor for default. Lisbon Contractors, Inc. v. United States, 828 F.2d 759 (Fed. Cir. 1987) .

Appellant does not dispute the Government's allegations that **MASCO's** work product contained numerous deficiencies, nor does Appellant challenge the accuracy of the cure notices or the show cause notice. Appellant essentially contends that the termination for default of the Mortgage Credit Technical Reviews portion of the contract was improper solely because the Government failed to provide Appellant with the eight full hours of training to which Appellant contends it was entitled under the Statement of Work. In response, the Government argues that the contract states the contractor shall attend a training session not to exceed eight hours, and that there is no requirement that Appellant actually receive eight hours of training.

The record in this appeal contains no evidence that the deficiencies cited in the notices to cure and in the show cause notice were inaccurate. In fact, Waller does not contest the Government's findings relating to Appellant's deficient performance as set forth in the cure notices and in the notice to show cause. With only one exception, Appellant does not dispute that the basis for the notice of termination for default was well-grounded. That exception, which is Appellant's only defense to the partial termination for default, is basically that, but for HUD's failure to provide the full allotment of training due under the contract provisions, Appellant could have sufficiently performed the contract. We are not persuaded by this argument.

Under the terms of the contract at issue, Appellant was required, at the outset, to be thoroughly familiar with basic HUD underwriting guidelines, procedures, and forms, as well as general underwriting processes and mortgage documents. Appellant was required to have approximately three years of specialized experience in the examination and analysis of financial and credit risk factors involved in the granting of loans. Thus, HUD had every right to expect Appellant to be capable of performing the contract in an acceptable manner without any additional training by the field office. The award of the contract to Appellant was not made in the belief that Appellant was a non-responsible contractor whose employees would require intense training in order to be able to properly perform the contract requirements. On the contrary, the award of the contract contemplated a contractor whose employees were relatively experienced in underwriting practices, procedures and forms and who would only need to be familiarized with special procedures of the field office. Thus, the pre-award contract requirements mandated that the successful offeror be a knowledgeable contractor who, at the time of contract award, possessed sufficient experience and expertise for the successful performance of the contract.

Appellant disputes the fact that the meetings he attended with the field office

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staff were "training sessions." The contract at issue does not define the term "training." Generally, training is defined as: "To coach in or accustom to a mode of behavior or performance; to make proficient with special instruction and practice." Webster's II, New Riverside University Dictionary. It would appear that, given this definition, the meetings between Appellant and the field office staff were "training" within the plain meaning of that term. We find reasonable the Government's contention that these meetings were designed for training purposes. Sexauer testified that these meetings were held for training purposes. The meetings were scheduled at points during the life of the contract which would indicate that they were intended for training purposes, and the topics discussed at these meetings were relevant to the proper execution of the contract requirements.

The first training session was scheduled immediately after Appellant was awarded the contract in December of 1994, and lasted for approximately two hours. This session covered endorsements, technical reviews for the field office, concerns that the field office had developed over the years, matters relating to default rates, and "things that MASCO should be looking for and commenting upon."

The second training session, held in January of 1995, was scheduled in response to deficiencies in the reviews which Appellant conducted, and lasted approximately one hour.

The third training session, held in May of 1995, was scheduled in response to the cure notice which was issued on March 16, 1995. This training session was attended by Glavey, Sexauer, and the mortgage credit reviewers from the Philadelphia field office, and lasted approximately two hours. In that session, the problems relating to the cure notice were discussed, as well as the concerns of Appellant with the field offices policies and expectations. Based on the reasons set forth above, we find that the three meetings attended by Appellant were training sessions as contemplated by the contract at issue. We find that Appellant attended five (5) hours of meetings/training sessions with the Philadelphia field office. In addition, Appellant attended training sessions conducted by HUD in Richmond, Virginia and Washington, D.C. on how to conduct underwriting reviews, which was the subject of the contract at issue.

The Statement of Work clause states: "The contractor shall attend a training session (not to exceed 8 hours) given by the Field Office on Mortgage Credit issues and the technical review procedures." It is clear from this provision that the Government was not obligated to provide Appellant with eight full hours of training, as argued by Appellant. This clause merely places a ceiling on the amount of training the Government was required to provide Appellant.

We find that the Government was not obligated to provide Appellant with eight full hours of training prior to partially terminating Appellant's contract for default as Appellant contends. We further find that the sessions provided to Appellant met the training requirement set forth in the Statement of Work clause. Finally, there is no evidence that, even if three additional hours of training had been provided, that Appellant could then have performed the contract in a satisfactory manner. Appellant should have been thoroughly familiar with the underwriting procedures and guidelines necessary to effectively perform the contract requirements prior to being awarded the contract. The cure notices and

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the show-cause notice outlined numerous deficiencies in Appellant's work product which Appellant should have been thoroughly familiar with as a prerequisite to being awarded the contract. By the time the show-cause notice was issued to Appellant, some nine months into performance of the contract, Appellant's work continued to show the same types of deficiencies which were discussed in the previous cure notices as well as in the training sessions conducted by the field office. Furthermore, Appellant never requested additional, enhanced, or more formal training.

Conclusion

The evidence in this case convinces us that Appellant failed to perform the contract in a satisfactory manner. The Government has demonstrated, by a preponderance of the evidence, that it had ample cause to partially terminate Appellant's contract for default.

For the above stated reasons, this appeal is DENTED.

David T. Anderson Administrative Judge

Concur:

Jean S. Cooper

Administrative Judge

Lynn J. Bush

Administrative Judge

I certify that the foregoing is a true copy of the Decision of the HUD Board of Contract Appeals in HUDBCA No. 96-A-113-C4, Appeal of MASCO, Inc.

Ella B. Harrison

Recorder 1997 WL 276175 (H.U.D.B.C.A.), 97-2 BCA P 28,993, HUDBCA No. **96-A-113-C4**

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