



Fighting Back Against Overly Strict Inspectors

by Michael C. Loulakis and Jeffrey G. Gilmore

One of the most difficult problems a contractor can encounter on a project is responding to the demands of an unreasonable inspector. Inspectors are charged with ensuring that the contractor performs in strict compliance with the plans and specifications, but this does not mean the inspector has unlimited authority to require the contractor to meet standards not contemplated by the contract.

If this situation occurs, however, the contractor can claim that its contract has been changed and, as a result, that it is entitled to recover any costs incurred in attempting to meet the inspector's demands.

A case that came before the Armed Services Board of Contract Appeals, *J.J. Barnes Construction Company, Inc.*, ASBCA No. 27876, 85-3 BCA paragraph 18,503 (1985), illustrates this principle. The Barnes case involved a contract for the renovation of a U.S. Air Force dormitory.

The contractor's work included the installation of drywall on walls and

board found that the different textures and unsightly appearance were caused not by the contractor's work, but by the manner in which the specifications called for the walls to be finished and painted.

The board looked to the well-established and accepted standard in the construction industry that whenever gloss paint is to be used on drywall, the entire wall must receive a thin skim coat of joint compound. This is necessary because the joint compound and the paper on drywall panels absorb paint at different rates. If the wall isn't primed in this fashion, the gloss paint will streak.

If the specifications had called for flat paint, the board did not believe that the government would have complained about the overall drywall work or its appearance.

The board also found that the inspector's use of a straightedge to determine whether the wall was even was improper. The inspector rejected the wall if he found a gap between the joint compound and the wall of one-eighth inch or greater—but there was no mention in the contract of this "eighth of an inch" requirement.

While the inspector had applied his own standards as to what constituted a reasonable gap for this type of work, the government introduced no evidence at trial to establish that the "eighth of an inch" tolerance was in accordance with industry standards or trade practice. Therefore, requiring the contractor to comply with such a requirement represented a change to the contract, enabling the contractor to recover its costs.

Other court cases also address the issue of overly restrictive inspections. The most fundamental issue is whether the tests undertaken by the inspector are called for by the specifications. If an inspector uses tests not sanctioned by the contract as a basis for determining that a contractor is not in compliance with a contract, the inspector is making a change to the contract—and the contractor is entitled to additional compensation. ■

Michael C. Loulakis and Jeffrey G. Gilmore are lawyers with the firm of Wickwire, Gavin & Gibbs, P.C., specializing in construction and public-contract law. Questions should be referred to the authors at 8230 Boone Blvd., Suite 400, Vienna, Va. 22180.

If an inspector holds your work up to standards not specified in the contract, you may be entitled to additional compensation.

ceilings throughout the dormitories. Once drywall was hung and the joint compound applied, the contractor was to paint all surfaces with a gloss-enamel finish.

During the pre-final inspection, government inspectors rejected numerous walls and ceilings on two main grounds. First, the appearance of the painted drywall was poor, due in part to the texture differences between drywall areas that had been taped and finished and the remainder of the drywall panel.

Second, when the inspectors attempted to determine whether the walls were flat—by placing a five-foot-long straightedge over the drywall surface—certain defects were apparent. In some areas the straightedge "rocked" when it was placed directly over a joint, while in others, placing the straightedge over two joints revealed a gap between the wall and the straightedge.

As a result, the inspector directed the contractor to correct the defect. Some walls had to be repainted two or three times. Joint compound often had to be reapplied over the final coat of paint, and the walls sanded and repainted again. Joints that caused the straightedge to rock had to be feathered out with joint compound two or three feet in each direction and then repainted.

In return, the contractor sought additional compensation in the contract price for correcting these problems, and the Armed Services Board of Contract Appeals agreed that the contractor was entitled to recover these costs. First, the