

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Walashek Industrial & Marine, Inc.) ASBCA No. 52166
)
Under Contract No. N00024-94-H-8691)

APPEARANCE FOR THE APPELLANT: John T. Jozwick, Esq.
Paradise Valley, AZ

APPEARANCES FOR THE GOVERNMENT: Fred A. Phelps, Esq.
Navy Chief Trial Attorney
James D. Beback, Esq.
Trial Attorney
Supervisor of Shipbuilding,
Conversion & Repair, USN
Everett, WA

OPINION BY ADMINISTRATIVE JUDGE JAMES

This appeal arises from the contracting officer's (CO) deemed denial of the November 1998 claim of Walashek Industrial & Marine, Inc. (WIM) for \$367,031 in alleged additional costs of metal surface preparation under the captioned contract to perform naval ship repairs and alterations. The Board has jurisdiction of the appeal under the Contract Disputes Act of 1978 (CDA), 41 U.S.C. § 607. The parties elected a record decision pursuant to Board Rule 11, and submitted evidentiary documents and briefs. The Board is to decide entitlement only.

FINDINGS OF FACT

1. The Supervisor of Shipbuilding, Conversion and Repair, Puget Sound (SUPSHIP) issued solicitation No. N62799-96-B-0010 on 21 May 1996 and required bids to be submitted by 24 June 1996. On 26 June 1996, SUPSHIP awarded Job Order No. 967M14 ("JO") to WIM for repairs on the USS FORD (FFG 54) during the period 8 July 1996 to 4 October 1996 at the fixed price of \$880,940.00 (R4, tab 1 at 1, 12) under Naval Sea Systems Command's (NAVSEA) 6 September 1994 "MASTER AGREEMENT FOR REPAIR AND ALTERATION OF VESSELS" No. N00024-94-H-8691 (R4, tab 18).

2. The JO required WIM, *inter alia*, to accomplish Work Item (WI) No. 472-90-001, entitled "Passive Countermeasure Materials, Ship Alt FFG-7-224K" (R4, tab 2). The WI cited 43 references: No. 2.a, NAVSEA "Standard Items" (SI), Nos. 2.b through 2.ap, 41 drawings of bulkheads and equipment, and No. 2.aq, the "Surface Preparation Specifications, Steel Structures Painting Council" (SSPC-SP) (R4, tab 2 at ¶ 2).

3. JO § C-1 provided that the current SIs applicable to specified WIs were listed in Attachment 1, “Index of Specifications,” in which “Category I” SIs were applicable to all WIs without further reference. SI 009-04 was listed as “Category I” (R4, tab 2, as supplemented 11 Apr. 2001). SI 009-04 contained the following pertinent provisions:

3.4.1 CHECK POINT is a phrase inserted in a Work Item to establish a point in the sequence of accomplishment of work at which time the [SUPSHIP] shall be notified to permit observation of a specific test or inspection by the Government.
...

3.4.2 Notify the [SUPSHIP] . . . at least four hours, but not more than one working day, prior to commencing the specific requirements in the paragraph following a CHECK POINT. . . .

3.4.2.1 Where the words CHECK POINT precede tests or inspections in a [WI] which are applicable to more than one action, the CHECK POINT shall identify the action required, e.g., CHECK POINT (Hydrostatic Test). . . .

(R4, tab 29 at 5) WIM’s QA Manual had similar provisions (R4, tab 30 at 12-13).

4. WI 472-90-001 provided in pertinent part:

3.2 Accomplish the requirements of [references] 2.b through 2.ap.

3.2.1 Ensure that all contractor employees are properly trained in the installation techniques for the passive countermeasure system . . .

....

3.2.2 Measure and record the environmental conditions on an hourly basis . . .

....

CHECK POINT (Surface Preparation)

3.2.3 Power tool clean to bare metal or bare GRP¹ the surfaces to receive the passive countermeasures.

¹ “GRP” means “glass reinforced plastic” (Thompson decl. at 2).

Accomplish the requirements of Surface Preparation Specification SSPC-SP-11 of [Reference] 2.aq.

3.2.4 Accomplish the requirements of [SI] 009-32 of [Reference] 2.a, including Table 9, Line 1, Columns B and C for properly prepared surfaces. Accomplish the requirements of Section D of [Reference] 2.b.

The WI also required induction and application of NF-150 primer and NF-151 overcoat, and applying, butting, and adhesion testing of tiles. (R4, tab 2 at 2-3)

5. WI ¶¶ 3.2 and 3.2.4 cited reference “2.b,” which was NAVSEA drawing 472-5604600 Rev. F, entitled “Special Treatment Installation Procedures and Typical Details.” Drawing 472-5604600, § D, entitled “SURFACE PREPARATION,” provided in pertinent part:

... SURFACES TO BE TREATED SHALL BE CLEANED TO NEAR WHITE METAL AND REPRIMED EXCEPT FOR AREAS PAINTED WITH EPOXY BASED PRIMERS WHICH ARE COMPLETELY INTACT AND LESS THAN 3 MILS DRY FILM THICKNESS (DFT) WITH NO CORROSION OR BLISTERING. THESE AREAS MAY BE CLEANED AND REPRIMED IN ACCORDANCE WITH SECTIONS D.1 AND D.3. . . .

Section D.1, entitled “PAINT REMOVAL,” provided in pertinent part:

... EXISTING PAINT SHALL BE REMOVED WITH ABRASIVE BLASTING, WHERE POSSIBLE, TO OBTAIN A SURFACE . . . THAT WILL ENHANCE PRIMER ADHESION. WITH POWER TOOL REMOVAL, CARE SHALL BE EXERCISED SO THAT THE TOOLS DO NOT CUT DEEPLY INTO THE SURFACE . . . AFTER THE PAINT HAS BEEN REMOVED TO THE PROPER METAL SURFACE CONDITION, THE SURFACE SHALL BE BRUSHED, VACUUMED OR AIR-CLEANED TO REMOVE RESIDUE OR TRAPPED GRIT.

ALTHOUGH THESE METHODS REQUIRE THE REMOVAL OF ALL OLD PAINT, NAVY FORMULA 150 (NF-150) PRIMER FILM AREAS WHICH ARE COMPLETELY INTACT AND LESS THAN 3 MILS IN DRY FILM THICKNESS (DFT), WITH NO CORROSION OR BLISTERING NEED NOT BE REMOVED AND MAY BE REPAINTED. NF-150 IS EASILY IDENTIFIED . . . BY ITS GREEN COLOR. METAL BASED

PRIMERS, SUCH AS ZINC CHROMATE (IDENTIFIED BY ITS LEMON YELLOW OR OLIVE DRAB COLOR) MUST BE COMPLETELY REMOVED DOWN TO NEAR WHITE METAL.

Section D.1.4 provided:

REMOVE PAINT DOWN TO NEAR WHITE METAL . . . USING ABRASIVE BLASTING WHERE POSSIBLE. POWER TOOLS MAY BE USED WHERE REQUIRED. . . . NON-METALLIC BASED PRIMERS WHICH ARE COMPLETELY INTACT AND ARE LESS THAN 3 MILS DFT WITH NO CORROSION OR BLISTERING MAY BE LEFT INTACT AND REPAINTED WITH NF-150 AND NF-151. METAL BASED PRIMERS, SUCH AS ZINC CHROMATE, SHALL BE COMPLETELY REMOVED DOWN TO NEAR WHITE METAL.

(R4, tab 2 at 1, tab 3 at 1, 11A-12)

6. The WI's ¶ 3.2.3 identified "SSPC-SP-11" of Reference "2.aq." SSPC-SP-11 was "suitable . . . where abrasive blasting is not feasible or permissible," required "power tool cleaning to produce a bare metal surface" and provided as follows:

2.1 Metallic surfaces which are prepared according to this specification, when viewed without magnification, shall be free of all visible . . . paint . . . Slight residues of . . . paint may be left in the lower portion of pits if the original surface is pitted.

(R4, tab 19 at 1)

7. The WI's ¶ 3.2.4 identified "SI 009-32," entitled "Cleaning and Painting Requirements," which required surface preparation by abrasive blasting, F-150 primer and F-151 finish paint, and stated in Note 22: "Blasted surface must be cleaned to near white finish, leaving surfaces free of paint. . . ." (R4, tab 20 at 23, 44)

8. On 19 June 1996, WIM's prospective surface preparation subcontractor, Fryer-Knowles, Inc. (FKI), submitted a \$132,234 bid to WIM for surface preparation and painting under WI ¶¶ 3.2.3 through 3.2.4.3, 3.2.7 and 3.3, including \$9,200 for "abrasives." On 20 and 25 June 1996 FKI revised its bid price to \$227,000 and to \$175,000, respectively. Susan Bittner, FKI's President, stated that she personally participated in and directed FKI's surface preparation bid to WIM; FKI intended to prepare surfaces by sandblasting, and to use power tool cleaning only in those areas where sandblasting was not

possible or practicable; and FKI's planned method for abrasive blasting did not change during FKI's bid revisions. (Ex. A-4 at ¶¶ 5-6, and attachments).

9. On 10 July 1996, FKI submitted to WIM Condition Found Report (CFR) No. 1 regarding the superstructure, stating that ¶ 3.2.3 of WI 472-90-001 "establishes SSPC-SP-11 as a degree of surface preparation" and ¶ D.1.4 of drawing 472-5604600 "expands this to state the use of abrasive blasting is preferable wherever possible." FKI requested "use of abrasive blast – per spec. requirements – as a method of surface preparation wherever possible." On 15 July 1996 WIM forwarded CFR No. 1 to SUPSHIP, stating that WIM concurred in FKI's findings. SUPSHIP reviewed CFR No. 1 and replied:

Abrasive blasting for surface prep to P/S and fwd dkhse sides only is acceptable by [SUPSHIP] with the following reservation:

A Process Control Procedure shall be submitted for approval. [sic] at no additional cost to the Government.

(R4, tab 5)

10. On 17 July 1996, WIM sent to SUPSHIP Inspection/Deficiency Report No. 8, concurring in FKI's CFR No. 2 that referred to WI ¶ 3.2.3 and stated that FKI "recommends sandblasting to the SSPC-10 requirements, instead of power tooling, because power tooling will not remove the zinc chromate primer 100% on the Mark 13, missile launcher." SUPSHIP's 19 July 1996 reply to WIM stated: "Concur with surface prep to launcher enclosure, as outlined in CFR request with special attention to 009-06. At no additional cost to the government." (R4, tab 6) SI 009-06 is not in the record.

11. On 19 July 1996, WIM submitted to SUPSHIP for approval of Process Control Procedure (PCP) No. "WIM96-07-01" for using the dry sandblast method on the port, starboard and deck house forward bulkheads. Items B and F.8 stated:

B. Purpose is to achieve a surface profile and cleanliness standard IAW SSPC-SP-10 and the specification item . . .

....

F.8. Following sandblasting, incidental power tool cleaning may be required. It will be accomplished IAW the Specification Item.

(R4, tab 22) On 19 July 1996: (a) SUPSHIP reviewed that PCP and stated:

section F says possible power tool cleaning in para 8 & section B said surface profile of SSPC-SP-10 need to add SSPC-CP-11 for power tool cleaned areas.

14 Results of Review: SUBJECT PCP HAS BEEN REVIEWED AGAINST THE CHECKED REFERENCE(S) AND FOUND TO BE: a. ACCEPTABLE . . . b. HOWEVER MINOR DEFICIENCIES HAVE BEEN NOTED AND ARE FORWARDED FOR YOUR REVIEW AND CORRECTION

(R4, tab 23); and (b) WIM added the following handwritten phrase to the PCP: “as well as, SSPC-SP-11 for mechanical cleaning” (R4, tab 22).

12. SSPC-SP-10 for “Near-White Blast Cleaning,” mentioned in WIM’s PCP No. WIM96-07-01, prescribed the following definitions:

2.1 A Near-White Blast Cleaned surface, when viewed without magnification, shall be free of all visible . . . paint . . . except for staining as noted in Section 2.2.

2.2 Staining shall be limited to no more than 5 percent of each square inch of surface area and may consist of . . . minor discolorations caused by . . . stains of previously applied paint.

(Ex. A-6 at 4)

13. FKI began surface preparation on the USS FORD pursuant to the WI procedure, drawing 472-5604600, Section D, as approved by SUPSHIP in its review of CFR No. 2 and PCP No. WIM96-07-01, *viz.*, by sandblasting except in areas where there was an existing coating of NF-150 green epoxy primer that was less than 3 mils thick and showed no evidence of corrosion or blistering. Such areas were cleaned but otherwise left intact. FKI performed mechanical cleaning in areas where abrasive sandblasting was not possible. (AR4, tab 4 at ¶ 7; ex. A-4 at ¶ 19; ex. A-5 at ¶ 20)

14. On about 26 July 1996, Mr. Eric Howard, NAVSEA’s technical representative from “BBN Acoustic Technologies,” told WIM that surface preparation leaving NF-150 epoxy primer in place was unacceptable; the JO required removal of all existing surface coatings to bare metal (AR4, tab 4 at ¶ 9; ex. A-3, A-4 at ¶¶ 21, 22; A-5 at ¶¶ 21, 22).

15. At a 30 July 1996 meeting with WIM’s representatives, SUPSHIP officials and Eric Howard stated to WIM that surfaces were unacceptable where any green NF-150 epoxy primer remained. WIM’s Project Manager, Edwin Speakman, told SUPSHIP that further surface preparation would cease until SUPSHIP gave “definitive direction.” Later on that same day, SUPSHIP’s John Sayers orally instructed WIM to continue employing the

surface preparation procedure leaving existing areas of NF-150 primer in place. (AR4, tab 4 at ¶¶ 11-13)

16. SUPSHIP’s Joe Thompson (and John Sayer on 6 August) inspected the JO surface preparation, with the following criteria and results on the following dates:

<u>Date/Time</u>	<u>Surface</u>	<u>SSPC-SP- Results</u>	
7-29/1330	Fwd deckhouse	10/11	“IAW SSPC-SP-10”
7-29/1520	Mast	11	“Courtesy exam”
7-30/1415	Missile ring	11	“IAW SSPC-SP-11”
8-2/1445	Stbd deckhouse	10/11	“is acceptable IAW SSPC-SP-10 & SSPC-SP-11”
8-6/1557	Port deckhouse	10	“Acceptable to SSPC-SP-10”
8-13/1525	Missile launcher	11	“Acceptable”
8-14/1420	Visor	11	“Acceptable”
	Windlass box	11	“Unsat”
8-14/1422	Fwd mast	11	“Acceptable IAW SSPC-SP-11”
8-20/1440	Lights	--	“Surface prep acceptable IAW SSPC-SP-11”
8-20/1440	Boat deck, davit	--	“Surface prep acceptable IAW SSPC-SP-11”

According to Mr. Thompson, when he “arrived at the checkpoint” for surface preparation, he “questioned acceptance in that the check points language of the specification required cleaning to bare metal” (Thompson decl. at 1). Mr. Thompson did not identify the date when such question was raised, nor does such statement appear on the inspection reports among his “Test/Inspection Comments” described above. (R4, tabs 25-26) We accord no probative weight to Mr. Thompson’s statement.

17. SUPSHIP’s Joe Thompson (and Dave Scott on 3 August) inspected the JO primer paint application, with the following results on the following dates:

<u>Date/Time</u>	<u>Surface</u>	<u>Results</u>
7-30/1230	Fwd deckhouse	“Acceptable IAW S/A FFG7-224K”
7-31/1200	Missile ring	“Acceptable IAW S/A FFG7-224K”
8-3/0930	Stbd deckhouse	“Acceptable on Port [sic]”

(R4, tab 28)

18. On 6 August 1996, SUPSHIP and the NAVSEA technical representative met with WIM and stated that all surfaces under the WI had to have NF-150 primer completely removed. At the conclusion of that meeting, Administrative Contracting Officer (ACO) Don Price orally directed Mr. Speakman to rework areas previously prepared and coated, and to prepare all exterior surfaces by removing all existing coating, including NF-150 primer, down to bare white metal. Mr. Speakman told Mr. Price that he thought such direction was a contract change. (AR4, tab 4 at ¶¶ 14-16)

19. On 6 August 1996, SUPSHIP issued Price Proposal No. (PPN) 3005, dated 1 August 1996, to WIM, stating:

TITLE: Passive Countermeasure Material, Ship Alt FFG-7-224K; accomplish

SCOPE: EDITORIAL CHANGE

1. In subparagraph 3.2.3, line three, after the words “SSPC-SP-11 of 2.aq.” add the following:

Work item requirements supercede SECT D. of 2.b (SHT 11-17 for surface preparation [sic]).

REASON: Clarification to surface prep

As issued, PPN 3005 was unsigned, with blank spaces for a time extension and price necessary for completion of work. On 18 September 1996, WIM filled in those blanks, seeking a JO extension to 14 October 1996 and a \$278,345 price increase. (R4, tab 7)

20. WIM completed the JO work on 7 October 1996 (AR4, tab 4 at ¶ 19).

21. The ACO’s 16 October 1996 letter to WIM replied to WIM’s Price Proposal 3005 submission, denying any price increase. The ACO contended that the JO required complete removal of existing coatings, Price Proposal No. 3005 was “editorial in nature” to “eliminate a superficial conflict in the specifications,” and, to resolve such conflict, the “specific” instruction (¶ 3.2.3) incorporating SSPC-SP-11 governed over the “general instructions” found in reference documents (¶ 3.2). (R4, tab 8)

22. On about 14 August 1997, WIM submitted an undated request for equitable adjustment to recover \$445,896.00 in allegedly increased surface preparation costs due to

forced overtime and more manpower for reworking and attempting to recover and maintain schedule (R4, tab 12).

23. The ACO's 12 September 1997 letter stated that WIM's request for equitable adjustment contained several deficiencies that precluded it from being evaluated as submitted, including the lack of a "certification required by the Contract Clause entitled 'Certification of Claims and Requests for Adjustment or Relief'" (R4, tab 9).

24. On 8 June 1998, WIM submitted to the ACO a revised request for equitable adjustment of \$367,031 for the alleged change in PPN 3005 (with the defective claim certification described in finding 27) (R4, tab 11).

25. On 2 October 1998, the CO denied WIM's claim (R4, tab 16).

26. WIM's 30 November 1998 letter to the ACO enclosed a copy of WIM's 8 June 1998 claim for \$367,031, and a signed claim certification that conformed to the requirements of the CDA, which respondent received on 4 December 1998 (AR4, tab 12). The CO did not reply to WIM's 30 November 1998 letter either orally or in writing. WIM appealed from the deemed denial of its 30 November 1998 claim on 3 May 1999, which was docketed as ASBCA No. 52166.

27. In June 1999, respondent moved to dismiss ASBCA No. 52166 for lack of jurisdiction because WIM had not appealed to the ASBCA within 90 days after receipt of the 2 October 1998 final decision. Our January 2000 decision on that motion held that WIM's June 1998 claim certification reflected an intentional or negligent disregard of the applicable CDA certification requirements and hence was not correctable under 41 U.S.C. § 605(c)(6), and that by appeal of the deemed denial of WIM's properly certified 30 November 1998 claim, the Board had jurisdiction of this appeal. *Walashek Industrial & Marine, Inc.*, ASBCA No. 52166, 00-1 BCA ¶ 30,728 at 151,791.

28. On 29 December 2000, ACO Price submitted a Declaration stating that the work to be performed in a work item:

is laid out in specific chronological order and normally this is the logical way to proceed with the work. Thus, in Work Item No. 472-90-001 the contractor would look to accomplishing the work to be performed in paragraph 3.2.3 according to its references before attempting the work found in paragraph 3.2.4 according to its references.

(Price Decl. at 2) The record contains no evidence that respondent stated its foregoing interpretation to WIM before it bid on the JO.

DECISION

I.

WIM has the burden of proving its constructive change claim against the Government. *See John T. Jones Const. Co.*, ASBCA Nos. 48303, 48593, 98-2 BCA ¶ 29,892 at 147,947, *aff'd sub nom. John T. Jones Const. Co. v. Caldera*, 178 F.3d 1307 (Fed. Cir. 1998) (table). If a contract authorizes a specific material or method of performance, to forbid such material or method is a constructive change. *See Bruno New York Industries Corp. v. United States*, 169 Ct. Cl. 999, 1007 (1965) (contract permitted use of capacitors other than tantalum if approved by the procuring agency; Government order requiring tantalum capacitor to exclusion of others was a change).

The sole issue to decide is whether SUPSHIP's 6 August 1996 directions and PPN No. 3005 were a constructive change, *i.e.*, whether the WI required mechanical cleaning to bare metal of all surfaces to receive countermeasure materials, as respondent argues, or required abrasive blasting of surfaces wherever possible to near white finish, free of paint except for areas with less than 3 mils DFT of epoxy based primers, with no corrosion or blistering, and with mechanical cleaning of residual surfaces, as appellant argues.

II.

Both parties contend that the WI provisions are unambiguous. "A contract term is unambiguous if there is only one reasonable interpretation . . . if more than one meaning is reasonably consistent with the contract language it can not be deemed unambiguous." *C. Sanchez & Son, Inc. v. United States*, 6 F.3d 1539, 1544 (Fed. Cir. 1993).

WIM argues that the WI provisions can be harmonized and meaning can be given to each. Thus, ¶ 3.2.3 required power tool cleaning of surfaces to bare metal pursuant to SSPC-SP-11, which by its terms applied where abrasive blasting was not feasible or permissible, while ¶ 3.2.4 required abrasive blasting of all other surfaces to near white metal with no more than the delimited epoxy primer remaining. WIM further argues that the parties adopted such interpretation by virtue of SUPSHIP's approval of WIM/FKI's CFRs and PCP, which authorized abrasive blasting of the superstructure and missile launcher, plus mechanical cleaning of residual surfaces (findings 9-11), and the parties' July-August 1996, pre-dispute course of dealing by which they performed, inspected and accepted surface preparation in accordance with SSPS-SP-10 for abrasive blasting and SSPS-SP-11 for mechanical cleaning (findings 13, 16). WIM's interpretation is consistent with the contract provisions, and is reasonable.

Respondent contends that WI ¶ 3.2.3, immediately following the "CHECK POINT (Surface Preparation)" required WIM to power tool clean all surfaces to bare metal, as required by SSPC-SP-11, which prescribed surfaces free of all visible paint (finding 4). The WI required work in chronological order, and thus WIM had to perform and inspect the mechanically cleaned surfaces pursuant to ¶ 3.2.3 before proceeding to perform the ¶ 3.2.4

work (finding 28). Several deficiencies in respondent's interpretation make it unreasonable.

First, the WI did not expressly state that its work must be performed in chronological order of paragraphs, and that the test or inspection the SUPSHIP was to witness at the "CHECK POINT (Surface Preparation)" was only of the work set forth in the immediately succeeding paragraph of the WI, ¶ 3.2.3 (finding 4).

Second, SI 009-04, ¶ 3.4.2, required notice to SUPSHIP "prior to commencing the specific requirements in the paragraph following a CHECK POINT" (finding 3). Even if the above-quoted provision were deemed to preclude commencing the requirements in any but the paragraph immediately following a CHECK POINT – in this instance ¶ 3.2.3 requiring mechanical surface preparation – respondent's conclusion still does not follow, because the drawing 472-5604600 work of abrasive blasting of surfaces was specified by WI ¶ 3.2, which *preceded* the CHECK POINT (finding 4).

Third, SI 009-04's ¶ 3.4.2.1 provided that where the words CHECK POINT precede WI tests or inspections applicable to more than one action, the CHECK POINT is to identify parenthetically the action required (finding 3). The CHECK POINT in issue is followed by the parenthetical "(Surface Preparation)." Though WI ¶ 3.2.3 has two sentences, it required only one action: surface preparation by mechanical cleaning. The two sentences in WI ¶ 3.2.4 required both surface preparation and painting actions. Therefore, to give meaning to the term "CHECK POINT (Surface Preparation)," *i.e.*, to identify which action was intended to be inspected or tested at that CHECK POINT, both ¶¶ 3.2.3 and 3.2.4 have to be considered to identify the intended action. Those paragraphs specified surface preparation by both mechanical and abrasive blasting.

Fourth, the record contains no evidence that respondent stated its foregoing interpretation to WIM before it bid on the JO (finding 28).

Fifth, respondent's interpretation conflicts with the well accepted and basic principle that an interpretation that gives a reasonable meaning to all parts of a contract will be preferred to one that leaves portions of the contract meaningless. *See Fortec Constructors v. United States*, 760 F.2d 1288, 1292 (Fed. Cir. 1985). If a contractor were to mechanically clean all surfaces to bare metal, pursuant to ¶ 3.2.3 and SSPC-SP-11, and thereafter were to perform abrasive blasting pursuant to ¶¶ 3.2 and 3.2.4 and drawing 472-5604600, the second performance would be a meaningless duplication. The SUPSHIP contracting officer tacitly recognized this by issuing PPN 3005 to supersede the abrasive blasting requirement.

Since we conclude that WIM's is the only reasonable interpretation of the WI provisions with respect to surface preparation, we do not address or decide the parties' further arguments regarding patent or latent ambiguities. We hold that the SUPSHIP's 6 August 1996 oral direction for WIM to rework all areas previously prepared and coated,

and to prepare all exterior surfaces by removing all existing coatings, including NF-150 primer, down to bare metal, and its PPN 3005, constituted a constructive change.

We sustain the appeal.

Dated: 19 April 2001

DAVID W. JAMES, JR.
Administrative Judge
Armed Services Board
of Contract Appeals

(Signatures continued)

I concur

I concur

MARK N. STEMLER
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

EUNICE W. THOMAS
Administrative Judge
Vice Chairman
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 52166, Appeal of Walashek Industrial & Marine, Inc., rendered in conformance with the Board's Charter.

Dated:

EDWARD S. ADAMKEWICZ
Recorder, Armed Services
Board of Contract Appeals