ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --	)	
	)	
M.A. Mortenson Company	)	ASBCA Nos. 53146, 53153
	)	53180, 53182
Under Contract No. DACA85-94-C-0031	)	

APPEARANCES FOR THE APPELLANT:	Patrick A. Sullivan, Esq. Robert H. Crick, Esq. John H. Guin, Esq. Winston & Cashatt Spokane, WA
APPEARANCES FOR THE GOVERNMENT:	Thomas H. Gourlay, Jr., Esq. Engineer Chief Trial Attorney Michael H. Gilbert, Esq. District Counsel Gregory W. Vanagel, Esq. Toni B. London, Esq. Engineer Trial Attorneys U.S. Army Engineer District, Alaska

OPINION BY ADMINISTRATIVE JUDGE ROME

This is our third Rule 11 opinion deciding entitlement on appeals by M.A. Mortenson Company (Mortenson) from 22 final decisions of the contracting officer (CO) denying its constructive change claims under its contract with the U.S. Army Corps of Engineers (Corps) for construction of the Composite Medical Facility, Phase II, at Elmendorf Air Force Base, Alaska (CMF project). The Corps' Elmendorf Resident Office (ERO) administered the contract. Familiarity with *M.A. Mortenson Company*, ASBCA Nos. 53105 *et al*., 04-2 BCA ¶ 32,713 (*Mortenson I*), in which we decided 5 of the 22 appeals, and with *M.A. Mortenson Company*, ASBCA Nos. 53123 *et al*., 2004 ASBCA LEXIS 106 (2 Nov. 2004) (*Mortenson II*), in which we decided 4 more, is presumed. We incorporate herein such of our fact findings in *Mortenson I* and *Mortenson II* concerning the contract's provisions and drawings and other matters as are relevant.

In these appeals, appellant claims extra costs on behalf of itself and its subcontractors due to alleged defective design specifications and drawings, or the government's alleged unreasonable interpretation thereof. The government contends that appellant did not coordinate its work; it misinterpreted the contract; and, with respect

to ASBCA Nos. 53153 and 53182, it did not rely in bidding upon its claimed contract interpretations. Appellant supports each of its appeals with the affidavits of Darryl Kloepfer, operations manager and vice president of its drywall subcontractor, Pacific Partitions/Specialty Interiors, J.V. (PPSI) and, for coordination issues, also relies upon the affidavit of Mortenson's CMF project coordinator, Paul Tate (*see Mortenson I*, findings 13, 15).

ASBCA No. 53146
(Mechanical Conflicts – RFI Nos. 1380 and 1417)

This appeal involves appellant's $5,236 claim for costs in connection with rerouting mechanical ductwork and enclosing the rerouted ducts in gypsum wallboard (GWB) bulkheads in order to resolve conflicts with structural steel.

FINDINGS OF FACT

1. Technical Specification section (hereafter TS) 15895, AIR SUPPLY AND DISTRIBUTION SYSTEM FOR AIR-CONDITIONING SYSTEM, paragraph 1.2, COORDINATION OF TRADES, states:

> Ductwork, piping offsets, fittings, and accessories shall be furnished as required to provide a complete installation and to eliminate interference with other construction.

(Bd. ex. 1, vol. 3, § 15895 at 2)

2. The parties agree that the contract drawings left inadequate clearance between the ceiling and the bottom of steel beams to run specified-sized ducts at their specified locations above three rooms—1C197, 1C185 and 1E208 (*see* R4, tabs 17, 18 at note 1, tabs 21-23; Bd. ex. 1, vol. 4, § 09000, Room Finish Schedule at 32, 45; Kloepfer aff., ¶¶ 7-10; gov't br. at 66-67, ¶¶ 5, 7). The government has not contended that the drawing errors were obvious.

3. The clearance problems were discovered during construction (Kloepfer aff., ¶¶ 8, 10). In Request for Information (RFI) No. 1380, dated 6 November 1995, Mortenson noted the problems at Rooms 1C197 and 1C185 and submitted a sketch with a duct rerouting solution, which the ERO accepted. Drawing No. M1.210, FIRST LEVEL AREA '1C2' FLOOR PLAN - HVAC, had depicted the duct at issue to be installed directly through the first level connection zone above Rooms 1C197 and 1C185 (*see* R4, tab 21; Kloepfer aff., ¶ 7). Instead, due to the clearance problem, the ductwork had to be rerouted through a corridor and light pocket bulkhead, in a less direct route (*see* R4, tab 23), which we find caused additional work not depicted in the contract.

4. In RFI No. 1417, dated 10 November 1995, Mortenson noted the problem at Room 1E208, involving Drawing No. M1.219, FIRST LEVEL AREA '1E3' FLOOR PLAN – HVAC, and submitted a sketch with a duct rerouting solution, stating that there would be a cost impact. The ERO accepted the rerouting proposal; it did not address the cost issue. Ductwork had to be rerouted outside the room, through a GWB bulkhead and back into the room downstream of the conflict, and through a second GWB bulkhead. PPSI was required to frame two additional openings not shown on the contract drawings. (*See* R4, tabs 22, 24; Kloepfer aff., ¶¶ 11, 12)

5. As described by Mr. Kloepfer in his unrebutted affidavit:

> In both instances, the space required to install the specified ductwork was not sufficient, causing Mortenson and its subcontractors to review the design deficiency, develop an appropriate solution which avoided creating further conflicts with other trades, future ductwork, and utility services, and ultimately reroute the ductwork . . . .

(Kloepfer aff., ¶ 11)

6. On 12 February 1996 Mortenson sought an equitable adjustment, based upon claims by its mechanical subcontractor, W.A. Botting Company/The Poole & Kent Company, A Joint Venture (BPK), and by PPSI, and for its own costs. The claimed costs included, among others, additions and revisions to drywall framing, extra pipe, insulation and other materials necessary for the revised ductwork, updating working drawings, and review and coordination of the new drawings. (R4, tab 6) The Administrative Contracting Officer (ACO) denied the request on 22 August 1996, alleging that the contractor had failed to comply with its contractual coordination duties and with TS 15895 (*see* finding 1) (R4, tab 7). In its 3 September 1996 response, Mortenson disputed that the coordination requirements applied and asserted that the problem was due to design deficiencies that caused "unconstructable" conditions (R4, tab 8).

7. On 26 May 2000 Mortenson filed a $5,236 claim based upon the government's alleged design errors, incorporating its equitable adjustment request (R4, tab 3). The CO denied the claim on 17 August 2000 on the basis enunciated by the ACO (R4, tab 1).

DISCUSSION

Appellant contends that the ductwork, framing and GWB work at issue were due to defective drawings and not to any failure to coordinate. Mr. Tate asserts in his affidavit in support of this and other of the appeals before us:

> No contractor coordination process and no amount of coordination will allow the equipment and utility systems in a building to be placed within a dedicated space when the dedicated space is not large enough to hold all the necessary equipment and utilities allocated to this space by the contract documents.

(Tate aff., ¶ 11)

The government concedes that the contract does not require appellant to correct design deficiencies or redesign the work (gov't br. at 69), but it contends that the contract does not presume adequate space to install the work exactly as the drawings depict. It asserts that TS 01440, TS 13060, and TS 15895 (*see Mortenson I*, findings 7, 8 and finding 1, above) require an Integrated Building System (IBS) space coordinator, coordination drawings, and that the contractor control the horizontal and vertical placement of items to eliminate space conflicts and provide ductwork necessary to eliminate interference with other construction.

A government design that does not provide adequate space to accommodate the work required to be accomplished within that space, regardless of any amount of coordination efforts by the contractor, is defective. *Century Construction Co*., ASBCA No. 31702, 89-1 BCA ¶ 21,333 at 107,579. Here, appellant brought the defective drawings and duct clearance problems to the ERO's attention and proposed solutions that involved rerouting duct outside the designated space and additional framing and GWB work not shown on the contract drawings. The ERO accepted appellant's solutions. Thus, appellant resolved the spatial conflicts in the defective drawings through its coordination and re-design efforts and complied with TS 15895 by placing ductwork to eliminate interference with other construction. (*See* findings 1-5) In contrast to other of Mortenson's appeals that we have decided to date, such as ASBCA No. 53105, this claim does not involve work that could have been avoided by timely recognition of the clearance problems. Rather, the claim arises from extra work that could not have been avoided by additional coordination (*see* findings 3-6).

Accordingly, appellant is entitled to an equitable adjustment.

DECISION

ASBCA No. 53146 is sustained and remanded for quantum resolution.

ASBCA No. 53153
(Revised Header Details at Central Plant Louvers)

This appeal involves appellant's $4,457 claim in connection with header construction and replacement of stud clips with welded plate material at central plant louver openings. The majority of the claim pertains to whether the contract originally required metal stud box headers at the louvers.

FINDINGS OF FACT

8. Drawing No. S0.02, GENERAL NOTES, states at General Note 3: "ALL DETAILS ARE TYPICAL. INCORPORATE INTO PROJECT AT APPROPRIATE LOCATIONS WHETHER SPECIFICALLY INDICATED OR NOT" (*see Mortenson I*, finding 45).

9. The louvers at issue are shown on Drawing No. A2.504, CENTRAL PLANT EXTERIOR ELEVATIONS, at Details 1 and 3. Detail 1, North Elevation, depicts a 12' high x 24' wide louver with the bottom at elevation 100'-0". Detail 3, South Elevation, depicts two 12' high louvers, with bottoms at 100'-0". One louver is 13'-6" wide; the other is 27' wide. These details do not show the means of supporting the structure above the louver openings. They refer to Detail 10, Louver Head, on Drawing No. A2.514, CENTRAL PLANT OPENING DETAILS. Appellant notes that the same is true of the other detail on Drawing No. A2.504 that includes a louver, Detail 4, West Elevation, although it is not at issue. (R4, tab 9; *see* Kloepfer aff., ¶ 9)

10. Detail 10 depicts a louver head in a typical exterior wall system; refers to a "6" Metal Louver;" and shows a single track metal header with a bottom at elevation 112'-0". It does not show a box header. (R4, tab 11; Kloepfer aff., ¶¶ 8, 9) Detail 2, Door Head, and Detail 6, Window Head, on the same drawing as Detail 10, each depict a box header support system (R4, tab 11; app. br. at 38, ¶ c; gov't br. at 73, ¶ 8). Those details cite to Detail 9, Metal Stud Opening Framing, on Drawing No. S-6, STEEL STUD DETAILS, which is captioned "METAL STUD DETAILS – EXTERIOR WALLS" (R4, tab 12).

11. Detail 9 is not referenced on the louver details on Drawing No. A2.504 (*see* finding 9). Detail 9 depicts an elevation and a sectional view of a box header, made from two 8", 16 gauge metal studs, enclosed by a single 16 gauge metal track on the top, connected into the jamb studs. The elevation view states that 16 gauge plates are to be provided full width where required to close gaps. The sectional view depicts additional track when an opening exceeds 8'-0". (R4, tab 12; *see also* R4, tab 5; gov't br. at 72, ¶ 6) The detail's Note requires a depicted sill support for openings greater than 8'-0". The opening framing schedule states:

> FOR OPENINGS GREATER THAN 12'-0" STUDS ARE SUPPORTED VERTICALLY BY STRUCTURE AND HORIZONTALLY BY DIAGONAL BRACING, SEE WALL SECTIONS, PROVIDE HEADER AND JAMB STUDS PER 8'-0" OPENING.

(R4, tab 12) For 8'-0" openings, the schedule calls for a box header (*id.*). The louver openings at issue exceed 12'-0" (*see* finding 9).

12. Drawing No. S-6 also includes Details 6 and 8, each entitled "METAL STUD @ DECK EDGE," which do not refer to openings. Those details cite to Drawing No. S-2. (R4, tab 12) That drawing appears to be included in two parts in appellant's claim (R4, tab 3, ex. B). Its title is not evident but the portions of record cover the central plant's mezzanine level and roof framing plans. Together, Drawing No. S-2 and Details 6 and 8 depict continuous tube steel and angles at the plant structure's perimeter. Appellant contends that they show that the continuous tube steel and angles support the structure above the louver openings at issue and that box headers are not required. (Kloepfer aff., ¶ 9; *see also* R4, tab 5) However, absent further information, such as a clear identification of the louvers on, or in relation to, Drawing No. S-2, and in view of Detail 9 on Drawing No. S-6, there is insufficient evidence in the record to support such a finding.

13. Drawing No. A2.511, CENTRAL PLANT WALL SECTIONS, at Detail 1, Typical Wall Section, depicts continuous perimeter structural tube steel brace and stud anchor with the top of steel at elevation 111'-7 1/2" (R4, tab 10). The parties agree that stud clips with 4x4x1/2 angle connection were to be welded to the steel walls at elevation 111'-7 1/2", below the 112'-0" elevation of the louver headers (Kloepfer aff., ¶ 8; gov't br. at 74, ¶ 10). This "resulted in an elevation gap between the top of metal stud walls, and the metal stud header intended to rest directly upon the metal stud walls" (Kloepfer aff., ¶ 6). Due to this gap, the metal stud clips, which were to fasten the metal studs to the metal stud header, could not perform their specified function (R4, tab 4; Kloepfer aff., ¶ 7; *see* gov't br. at 74, ¶ 10).

14. On 8 September 1995 Mortenson submitted RFI No. 1096, noting that the stud clips could not be fastened to the metal stud headers and asking for "an acceptable fix" (R4, tab 4). The problem had not been identified until after the clips were bolted (Kloepfer aff., ¶ 13). The ERO responded on 12 September 1995 that the contractor was to modify Detail 10 on Drawing No. A2.514 as shown in an attached sketch, which included metal plates and depicted a metal box header, citing Drawing No. S-6, but not naming Detail 9. The header differed from that for the Door Head and Window Head details on Drawing No. A2.514. (R4, tab 4; Kloepfer aff., ¶¶ 10-12)

15. On 20 October 1995 Mortenson sought a $5,265 change order, on behalf of itself, PPSI and others, alleging that the ERO's modification of Detail 10 was due to a design defect; it had added a metal stud box header and plates not previously required; and existing clips had to be removed (R4, tab 3, ex. D).

16. In November and December 1995 the parties attempted unsuccessfully to negotiate a price for the work. Among other disputed costs, Mortenson continued to deny that the contract required the box header shown on Detail 9 for the louvers. (Ex. G-9) The government's price negotiation memorandum reports that it had agreed to contact the Architect and Engineer (A&E) firm that had designed the project to determine if "they intended to have a metal stud box beam at these locations," and that the government had advised the contractor that the A&E considered the box headers required per Detail 9 (*id*., mem. at 4).

17. On 10 January 1996 the ERO issued unilateral Modification No. P00061 (Mod. 61), which called for Mortenson to "[r]evise the connection of the louver header wall (Detail 10/A2.514)" to that shown on the ERO's sketch (ex. G-9 at 2). It increased the contract amount by $742 for that revision, which, according to the CO's final decision, below, covered unbolting and disposal of the original clips and the supplying and welding of an equal number of new clips (R4, tab 1 at 3).

18. In a 3 June 1996 letter to Mortenson, PPSI stated that the contract drawings showed box headers at all unsupported openings, *i.e*. windows and doors, but did not call for box headers at the louver openings, which it alleged were clearly supported by the structure's continuous tube steel and angles at the building perimeter (R4, tab 5). On 11 June 1996 Mortenson requested a $4,523 equitable adjustment (crediting the $742). It appended PPSI's letter and alleged that the ERO had supplied a sketch:

> [D]eleting the metal stud clips at 16" o.c. and adding plate material 48" o.c. welded to the 4 x 4 x ½ angle and header. It would seem logical that because these openings were changed from a supported opening with stud clips 16" o.c. to being supported every 48" that the addition of the metal stud box header in the sketch was necessary to support the weight of the wall above the louver opening.

(R4, tab 6) Mortenson asserted that Mod. 61 had not compensated it for its costs of providing the box headers and was inadequate to cover its costs of removing installed clips and welding and priming new plate fasteners (*id*.).

19. On 26 May 2000 Mortenson submitted a $4,457 claim, incorporating its equitable adjustment request and challenging the amount of the contract price increase for the work covered under Mod. 61 (R4, tab 3). The CO denied the claim on 8 September 2000 on the ground that Detail 9 required the box header support system for the louver openings. She also asserted that the modification had fairly compensated Mortenson for the work covered and denied its claims for the cost of priming clips and associated overhead on the basis that those costs pertained to original contract requirements. (R4, tab 1)

20. The record does not contain any evidence of PPSI's interpretation of the louver opening support requirements at the time of bid to Mortenson (regardless of interpretation during performance). Unlike in other of Mortenson's appeals, Mr. Kloepfer's affidavit does not address PPSI's interpretation at the time of its bid.

DISCUSSION

Appellant contends that, to correct a design deficiency, the government modified the header design details for the louvers by adding welded metal plates and a newly configured metal stud header. It asserts that Detail 9 on Drawing No. S-6, which depicts a box header, applies to doors and windows, but that Details 1, 3 and 4 on Drawing No. A2.504; Detail 10 on Drawing No. A2.514; and Details 6 and 8 on Drawing No. S-6, represent the header details above the central plant louvers and do not show box headers as a means to support the structure above the louver openings. Rather, structural tube steel and angles, as on Drawing No. S-2, perform that function. (*See* findings 9-12)

The government responds that appellant failed to read the contract as a whole and that Detail 9 is a typical detail that requires a metal stud box header support system for the louver openings. It claims that appellant is not entitled to payment for the header construction and that Mod. 61 otherwise adequately compensated it for the ERO's design revisions (*see* finding 17). Alternatively, the government contends that the contract is ambiguous with respect to Detail 9's applicability and that appellant cannot show that it relied upon its claimed interpretation at the time of its bid. It does not allege that the ambiguity was patent.

If a government contract provision is susceptible of more than one different, reasonable, interpretation, it is ambiguous. *Metric Constructors, Inc. v. NASA*, 169 F.3d 747, 751 (Fed. Cir. 1999); *Edward R. Marden Corp. v. United States*, 803 F.2d 701, 705 (Fed. Cir. 1986). In that case, the doctrine of *contra proferentem* may apply, under which the contractor's interpretation will prevail, even if the government's is the more reasonable. *United Pacific Insurance Co. v. United States*, 497 F.2d 1402, 1407 (Ct. Cl. 1974). However, *contra proferentem* principles are subject to a contractor's proof that it

relied upon its alleged contract interpretation at the time of its bid, regardless of its interpretation during performance. *Fruin-Colnon Corp. v. United States*, 912 F.2d 1426 (Fed. Cir. 1990); *Blueridge General, Inc*., ASBCA No. 53663, 03-2 BCA ¶ 32,339.

A subcontractor's interpretation will be imputed to a contractor if the contractor proves that the subcontractor relied upon the interpretation in its bid to the contractor, and that the contractor incorporated the subcontractor's bid or the subcontractor's price was comparable to that of others and the contractor's bid reflected those estimates. The contractor is not required to prove that it specifically included the subcontractor's price in making its bid. *Froeschle Sons, Inc. v. United States*, 891 F.2d 270, 272 (Fed. Cir. 1989); *see Fruin-Colnon Corp., supra*, 912 F.2d at 1430-31; *R. B. Hazard, Inc*., ASBCA No. 41295, 93-2 BCA ¶ 25,577. Proof of reliance in bidding is required only in cases of ambiguity when a contractor invokes the rule of *contra proferentem*. When a contractor's interpretation is the only reasonable one, proof of reliance is not required. *Southwest Marine, Inc.*, ASBCA No. 46155, 96-2 BCA ¶ 28,292 at 141,235; *see also Philip Environmental Services Corp*., ASBCA Nos. 53445, 53573, 02-1 BCA ¶ 31,841.

In this case, appellant's contention that the contract drawings show box headers at all unsupported openings, such as windows and doors, but do not call for box headers at the louver openings, which it alleges are supported by the structure's continuous tube steel and angles at the building perimeter (*see* findings 9, 10, 13, 18), is reasonable. The fact that the ERO consulted with the A&E about the intended support system for the louvers suggests that it recognized that there could be some question about the matter (*see* finding 16). However, the government's reliance upon Detail 9, which calls for box headers for openings of 8'-0" and more, is also reasonable (*see* findings 9, 11).

Because the contract is ambiguous concerning box header requirements for louvers, and appellant contends that it relied upon its subcontractor PPSI's interpretation (app. reply br. at 8), it must establish that PPSI relied upon the claimed interpretation at the time of its bid to appellant. The record does not contain any evidence of PPSI's interpretation, at that time, of the louver opening support requirements (finding 20). Appellant has thus failed to meet its burden of proof.

Finally, the government acknowledged liability in Mod. 61 for appellant's extra costs of unbolting and disposing of original clips and supplying and welding new ones, but the amount of those costs remains in dispute (*see* findings 17-19, *see also* gov't br. at 71) Because this is a quantum issue, we do not reach it.

DECISION

ASBCA No. 53153 is sustained to the extent that the government acknowledges liability for extra costs of unbolting and disposing of original clips and supplying and

welding new ones. This quantum issue is remanded for resolution. The appeal is otherwise denied.

ASBCA No. 53180
(Dental Mock-Up Review Changes)

This appeal involves appellant's $9,236 claim for costs of changes to the Dental Treatment Mock-up Room, Room 2A118 (Dental Mock-up Room).

FINDINGS OF FACT

21. In addition to the FAR Specifications and Drawings for Construction, and Inspection of Construction clauses (*see Mortenson I*, finding 3, *Mortenson II*, finding 20), the contract includes the FAR 52.236-0005, MATERIAL AND WORKMANSHIP (APR 1984) clause, which provides in part:

> (b) The Contractor shall obtain the [CO's] approval of the machinery and mechanical and other equipment to be incorporated into the work. . . . When required by this contract or by the [CO], the Contractor shall also obtain the [CO's] approval of the material or articles which the Contractor contemplates incorporating into the work. . . . Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(Bd. ex. 1, vol. 1 at I-77)

22. TS 01030, SPECIAL ITEMS, states in part:

> 28. ROOM MOCK-UPS: Complete mock-up rooms shall be constructed in-place by the Contractor for certain types of rooms as described below. Mock-up rooms shall be completely finished spaces with all plumbing, medical gases, heating, air-conditioning, electrical, light and communications fixtures and outlets, ceilings, grilles, casework, equipment, doors and hardware and other items as will be required in the completed facility. . . . Prior to installing mechanical, electrical, etc., mock-ups shall include all finishes and must be approved by the [CO] to insure proper location of all items. Installation for building services shall be in accordance with locations in approved

> mock-ups. . . . Mock-up rooms will be used for approval, quality control, and training . . . . Rooms shall be as shown on the drawings for the rooms listed below.

(*Id*., § 01030 at 13-14) The Dental Mock-up Room was listed.

23. In a 31 December 1996 letter to the ERO, Mortenson listed several items, which it described as modifications to the Dental Mock-up Room required by the ERO prior to scheduling further inspection (R4, tab 4). The ERO responded on 13 January 1997 that the room was not finished as required by TS 01030; final inspection had not occurred; and the list set forth by Mortenson was preliminary. It denied modifying the contract and described the listed items as corrections and part of the government's right to make adjustments through the mock-up process. It expressed a concern that Mortenson was working outside the approved mock-up, stating that it did so contrary to contract requirements and at its own risk for possible tear out of completed work. (R4, tab 3, ex. B)

24. On 8 June 1998 Mortenson requested a $9,205 equitable adjustment based upon claims from subcontractors, including ALCAN Electrical & Engineering, Inc., BPK, PPSI, and Klondike Painting & Decorating (Klondike), and for its own costs. Of the matters listed in its 31 December 1996 letter, Mortenson claimed compensation for: (1) revision to electrical rough-in caused by the lowering of electrical outlets by 3"; (2) revision to mechanical rough-in caused by raising the countertop height to 33"; (3) relocation of Sharps container; and (4) patching of sheetrock and taping. Items (1) and (2) included material and labor at the Dental Mock-up Room and throughout the dental area. Items (3) and (4) included material and labor in that room only. (R4, tab 9) On 29 June 1998, the ERO denied the request for the reasons given in its 13 January 1997 letter (R4, tab 10).

25. On 26 May 2000 Mortenson submitted a $9,236 claim, incorporating its equitable adjustment request (R4, tab 3). On 13 October 2000, the CO denied the claim in part. She found no merit to the claim for work in other rooms, performed before the CO approved the Dental Mock-up Room, but found merit for work within the room that was due to government-directed changes to the contract work. She did not identify those changes or assign a monetary value to them. However, she seemed to exclude, at least, work pertaining to raising sink countertops to 33". (R4, tab 1)

26. On 11 December 2000 Mortenson appealed to the Board from that part of the CO's decision "in which no merit was found" (*see* R4, tab 2). Its complaint seeks an equitable adjustment in the amount of the costs the CO rejected. Like the CO's decision, neither the notice of appeal nor the complaint identifies the portions of Mortenson's claim that remain at issue.

27. Mortenson offers Mr. Kloepfer's affidavit, which refers to the above correspondence and claim, but does not further explicate the claim and consists of unsupported allegations. Mortenson has not identified the contract requirements or directions with which it allegedly complied, nor has it supplied evidence of any ERO approvals that were later changed. For example, it has not presented any evidence that the government ever directed or approved installation of the sinks at a level lower than 33". On the other hand, the government acknowledges some directed changes to the Dental Mock-up Room, which it does not identify, and some unspecified liability to appellant for those changes only (gov't br. at 79).

DISCUSSION

Appellant contends that the government changed the contract by requiring it and its subcontractors to implement numerous revisions to the Dental Mock-up Room. Although the government acknowledges some unspecified liability for directed changes to the Dental Mock-up Room (finding 27), it alleges that appellant performed work, particularly in areas outside the Dental Mock-up Room, prior to CO approval of the mock-up areas in question. It asserts that TS 01030 requires CO approval of mock-up rooms and that installation for building services was to be in accord with the locations in approved mock-ups (*see* finding 22). The government also cites the contract's Material and Workmanship, Specifications and Drawings for Construction, and Inspection of Construction clauses as providing, respectively, that equipment, material and articles installed without required CO approval are at risk of rejection; when approved shop drawings are required, any work done before approval is at the contractor's risk; and the contractor must replace or correct work that does not conform to the contract (*see* finding 21; *Mortenson I*, finding 3; *Mortenson II*, finding 20).

Appellant has appealed from the CO's decision to the extent that she denied its claim (finding 26), but it has not identified the contract requirements or directions with which it allegedly complied, nor has it supplied evidence of any ERO approvals that were later changed. Mr. Kloepfer's affidavit consists of unsupported allegations (finding 27). Appellant has failed to meet its burden of proof.

DECISION

ASBCA No. 53180 is denied.

ASBCA No. 53182
(Added Control Joints in GWB)

This appeal involves appellant's $51,763 claim for costs to provide and tape control joints in GWB, beyond the finished ceilings, to the structural deck above.

FINDINGS OF FACT

28. TS 09250, GYPSUM WALLBOARD, provides:

> 1.1 REFERENCES
>
> The publications listed below form a part of this specification to the extent referenced.

(Bd. ex. 1, vol. 2, § 09250 at 1) Certain American Society for Testing and Materials (ASTM) and Gypsum Association (GA) standards and publications are listed, among others. ASTM C 840 (1988), Application and Finishing of Gypsum Board, and GA 216 (1989), Application and Finishing of Gypsum Board (referred to as GA-216-89), are among the listed standards. (*Id*. at 1-2) TS 09250 further provides:

> 1.2 DESIGN REQUIREMENTS
>
> Except where otherwise indicated or specified, the work shall conform to and shall be applied as indicated in the finish schedule.
>
> . . . .
>
> 3.2 CONTROL JOINTS
>
> Control joints shall be installed as recommended by the manufacturer and be in accordance with ASTM C 840 and the following additional requirements: Door frames of less than *ceiling* height may be used as control joints only if standard control joints *extend to the ceiling* from both corners of the top of door frame.
>
> . . . .

3.3 APPLICATION OF GYPSUM WALLBOARD

Gypsum wallboard shall be applied to framing and furring members in accordance with ASTM C 840 and the requirements specified herein . . . . Use gypsum wallboard of maximum practical length. . . . In vertical application of gypsum wallboard, panels shall be of length required to reach full height of vertical surfaces in one continuous piece.

. . . .

3.6 FINISHING OF GYPSUM WALLBOARD

Gypsum wallboard shall be taped and finished in accordance with ASTM C 840 and GA 216 [[1]]. Joint, fastener depression, and corner treatment shall be provided.

. . . .

3.9 QUALITY CONTROL

Contractor shall establish and maintain control of the work covered under this section to ensure compliance with the contract requirements in accordance with SECTION 01440 including, but not limited to, the items listed below:

. . . .

[1] GA-216-89, § 2.14, defines "Finishing" to include the taping of joints, among other things. It refers to GA-216-89, § 18, "Finishing of Gypsum Board," which contains finishing and taping standards, and to an Appendix (ex. G-15 at 4, 15-16). There are no relevant control joint installation and spacing provisions among the referenced materials. The government alleges that the contract incorporated GA-216-89, § 5.6, "Control Joints" (ex. G-15 at 9), which is similar to ASTM C 840, § 20.1 (*see* finding 30), but we have not found that provision to be referenced in the contract, and thus incorporated into it under TS 09250, ¶ 1.1 (*see* finding 28).

g[.] Control joints are installed where required.

(Bd. ex. 1, vol. 2, § 09250 at 1, 2, 6, 8) (emphasis added)

29. With respect to the manufacturer's recommendations concerning control joint installation, incorporated into TS 09250, ¶ 3.2, U.S. Gypsum Company (USGC) manufactured the control joints at issue (Kloepfer aff., ¶ 9). Regarding control joints, the company's Gypsum Construction Handbook (4th edition, 1992), in effect as of contract award, and still current, states:

> **Control Joints**
>
> SHEETROCK Zinc Control Joints are used to relieve stresses induced by expansion and contraction across the control joint in large ceiling and wall expanses in drywall and veneer plaster systems. *Used from door header to ceiling or from floor to ceiling* in long partitions and wall furring runs; from wall to wall in large ceiling areas. Made from roll-formed zinc to resist corrosion; have a ¼" open slot protected by plastic tape, removed after finishing.

(Bd. ex. 5 at 48) (bold in original; other emphasis added) The handbook further states:

> **Control Joint Application**
>
> . . . .
>
> Gypsum construction should be isolated with control joints where (a) partitions or ceilings of dissimilar construction meet and remain in the same plane; . . . (c) expansion or control joints occur in the base wall construction and/or building structure. . . . [C]ontrol joints should be used in the face of gypsum partitions and ceilings when the size of the surface exceeds the following control-joint spacings; **Partitions**, 30' maximum in either direction . . . .
>
> . . . .
>
> *Ceiling-height door frames may be used as vertical control joints for partitions*; however, door frames of lesser height may only be used as control joints if standard control joints

> extend to the *ceiling* from both corners of the top of the door frame.

(*Id*. at 158) (bold in original; other emphasis added) We infer that "partitions," as used in this part of the handbook, refers to walls.

30. ASTM C 840 (1988), incorporated into TS 09250, ¶ 3.2, with respect to the installation of control joints, states:

> 20.1 Install control (expansion) joints . . . in partition, wall and wall furring runs exceeding 30 ft . . . . Do not exceed a distance of 30 ft . . . between control (expansion) joints in walls or wall furring . . . . Wall or *partition height* door frames may be considered a control joint.

(Bd. ex. 4 at 375) (emphasis added) We find that "partition height," in the context of this ASTM provision, equates to "ceiling height."

31. The parties appear to agree that the contract's Room Finish Schedule calls for suspended acoustical tile ceilings for the typical rooms at issue. Ceiling heights appear typically to be 8 or 9, and occasionally 10 feet. (*See* Bd. ex. 1, vol. 2, § 09510, vol. 4, § 09000 at 7 *et seq*.) One or more doors were to be installed in the rooms (*see* Bd. ex. 1, vol. 4, § 08000 at 4 *et seq*.). There is no evidence that there were any walls over 30 feet long that did not involve door frames considered as control joints, or original control joints.

32. The CMF project's IBS facility was constructed in modules, each consisting of a unit of space served by its own utility systems. Vertically, each module contains three separate zones: a distribution zone (DZ), a connection zone, and an occupied zone. (*See Mortenson I*, finding 8; Kloepfer aff., ¶ 5) The connection zone is a layer of space between the underside of the DZ's walk-on deck and the ceiling of the occupied zone—in this case, the contract-scheduled ceiling. In Mr. Kloepfer's 34 years' experience in the drywall industry, the walk-on deck has never been referred to as the ceiling of a module (Kloepfer aff., ¶¶ 1, 2, 6). The government acknowledges that "most contract references to ceiling are to the suspended ceiling" (gov't br. at 85, n.12), but refers to one exception at TS 09250, ¶ 3.1.5, "Perimeter Isolation," which states: "Where steel stud partitions are indicated as full height, and abut a structural ceiling such as steel roof deck and/or joists, an isolation, double runner, (deflection) joint shall be provided" (Bd. ex. 1, vol. 2, § 09250 at 5). This specification does not pertain to control joints. In any event, we find that the walk-on deck is above, and distinct from, the contract-scheduled ceilings, which are in the occupied zone and are separated from the deck by the connection zone.

33. PPSI determined the size and quantity of control joints for its bid based upon TS 09250, paragraph 3.2, and its incorporated manufacturer's and ASTM literature, which it concluded called for installation of control joints from door header to ceiling or from floor to ceiling. PPSI prepared its quantity takeoff and bidding budget accordingly and installed the control joints it had calculated in its bid. (Kloepfer aff., ¶¶ 7-10)

34. QAR Regan Sarwas, a licensed professional civil engineer who holds Master and Bachelor of Science degrees in civil engineering and has design and other experience as a structural engineer, submitted an affidavit in support of the government (ex. G-11). In about November 1996, Mr. Sarwas advised the contractor that control joints were to be installed the entire height of the GWB walls, to the DZ's walk-on deck, which he described in his affidavit as a "ceiling or deck" (*id*., ¶ 3). The contractor disputed that this was a contract requirement. Mr. Sarwas states in his affidavit that TS 09250 and ASTM C 840 "did not clearly define the vertical limit of a control joint nor differentiate between structural or acoustical ceilings with respect to control joints" (*id*., ¶ 4). Accordingly, he sought advice and spoke by telephone with an unidentified technical representative from USGC and one from the GA, also unidentified (*id*.). In contrast to Mr. Sarwas' affidavit, in his contemporaneous 26 November 1996 QAR report concerning his conversations, the only "ceiling" he referred to is the contract-scheduled ceiling:

> [B]oth . . . agreed that a control joint in a Gyp. board wall should extend from the floor to the top of the wall. [T]he decorative metal would only be required *to the ceiling*. The joint *above the ceiling* would require treatment appropriate to its rating (sound/fire). If the joint is not continued *above the ceiling, the gyp above the ceiling* could start to crack anywhere, and run down into the visible wall at any location, not necessarily at a control joint.

(Ex. G-10 at 2 (emphasis added); *see also* ex. G-11, ¶ 4) The unnamed trade representatives did not submit sworn statements.

35. On 26 November 1996, the ERO issued non-conformance report (NCR) No. 629, drafted by Mr. Sarwas, concerning "Control Joints in Gypsum" (R4, tab 4; ex. G-11, ¶ 6). Again, in the contemporaneous NCR, Mr. Sarwas differentiated between the contract-scheduled ceiling, which he described as a "ceiling," and the deck, which he did not so describe. Citing TS 09250, ¶ 3.2, the NCR stated:

> THERE NEEDS TO BE A JOINT IN THE [GWB] *ABOVE THE CEILING*. METAL ONLY NEEDS TO GO TO THE

> CEILING; BUT A JOINT, FINISH PER THE RATING OF THE WALL, MUST EXTEND TO THE DECK.

(R4, tab 4) (emphasis added) Mortenson responded on 3 December 1996:

> CONTRO[L] JTS. ARE NOT INDICATED AS BEING REQUIRED "TO EXTEND ABOVE THE SCHEDULED CEILING," THIS IS ACCORDING TO THE ARCHITECTURAL DWGS, SPEC. 09250, ASTM C840-88, GA-214, GA-216, AND GA-600. SPEC. 09250 3.2 STATES "CONTRO[L] JTS. SHALL BE INSTALLED AS RECOMMENDED BY THE MANUFACTURER AND BE IN ACCORDANCE WITH ASTM C840 . . . ." ASTM C840 DOES NOT INDICATE THAT CONTRO[L] JTS. ARE TO BE INSTALLED ABOVE CEILINGS. HOWEVER, THE MANUFACTURER AND SPEC 09250 3.2 STATE "CONTRO[L] JTS. SHOULD BE INSTALLED UP TO THE CEILING.["] IF ADDITIONAL WORK IS DESIRED PLEASE ISSUE AN RFP.

(*Id*.)

36. Also on 26 November 1996, the ERO issued NCR No. 630 calling for control joints in "HEADERS/SOFFITS," on the ground that TS 09250, ¶ 3.2, required control joints in GWB every 30 feet (R4, tab 5). According to Mortenson, NCRs 629 and 630 each incorrectly mandated control joints "above ceiling elevations" (R4, tab 3 at 2, tab 5).

37. In a 26 December 1996 QAR report, Mr. Sarwas noted that PPSI's project manager had asserted that control joints had been installed in accordance with the contract and that, based upon PPSI's experience, they were adequate. Mr. Sarwas stated in his report that there were some cracks, but he did not specify the number, size, or location. (Ex. G-13)

38. On 24 January 1997, PPSI wrote to Mortenson that it had acceded to the ERO's call for control joints from what PPSI described as "floor level to floor level," but that it would seek an equitable adjustment. It considered the ERO's position to be contrary to the published literature of ASTM, the GA, and control joint manufacturer USGC, which it interpreted as defining control joints "running from floor to ceiling." (R4, tab 6) On 3 March 1997, PPSI sought a $7,783 equitable adjustment for installing control joints "from above all ceiling height to decking (floor slab above)." PPSI stated that its request did not cover control joints at soffits "if the [Corps] should desire them." (R4, tab 8 at 8, 9) On 21 April 1997, Klondike, Mortenson's taping subcontractor, sought

$23,312.63 for about 228 "control joints above ceiling," noting that most rooms had finished ceilings (*id*. at 6).

39. The evidence is conflicting, or unclear, as to whether the contract-scheduled ceilings were in place when Mr. Sarwas directed Mortenson to install control joints to the height of the DZ's walk-on deck. Mr. Sarwas states that they were not (ex. G-11, ¶ 3). Mr. Kloepfer states that:

> PPSI extended the control joints as directed. Since the GWB and control joints had already been installed where required by the contract, PPSI was required to re-mobilize its crews, remove the ceilings, cut the GWB back and install the additional control joints.

(Kloepfer aff., ¶ 17)

40. On 27 May 1997, Mortenson sought a $41,571 equitable adjustment on behalf of itself, PPSI and Klondike for providing additional GWB control joints above the ceiling line and for taping. The proposal excluded any control joints at soffits. (R4, tab 8) By letter of 1 July 1997 (ERO 1885), the ACO denied the request, stating:

> The purpose of a control joint is to relieve stresses induced by expansion and contraction in large ceiling and wall expanses in interior drywall systems. It is industry standard to extend these joints the entire height of the wall. The walls do not stop at the acoustical ceiling but continue to the deck above. The ASTM references to control joints are drawn with a hard ceiling and the GWB stopping at that ceiling. This is not the typical situation that occurs on this project where the GWB continues above the suspended ceiling to the deck above. If the control joint does not extend the entire length of the wall, there is nothing to prevent cracking to occur at any place along the wall above the acoustical ceiling and propagate downward to the exposed portion of the wall. This is not controlling the cracking, as a control joint is meant to do.

(R4, tab 9)

41. On 16 March 1998 Wasche Commercial Finishes, Inc. (Wasche), Mortenson's painting subcontractor, submitted a $6,952 proposal for 230 "added control joints," stating that "[a]ny control joint which extended above the scheduled ceiling required

work beyond that covered in our contract. These locations occurred at any wall over 30 feet long." (R4, tab 3)

42. On 26 May 2000 Mortenson submitted a $51,763 claim on behalf of itself, PPSI, Klondike, and Wasche for extra costs of control joints in GWB "above ceiling lines" (R4, tab 3 at 1). Mortenson disputed the ERO's interpretation of contract requirements and industry standards and its evaluation of the material properties of GWB. From the amount of the claim, which aggregates the subcontractors' and Mortenson's prior requests for equitable adjustment, and Mortenson's mark-up, we infer that the ERO ultimately did not require, and/or the claim does not cover, control joints in soffits. On 17 November 2000 the CO denied the claim (R4, tab 1).

43. Mr. Sarwas states in his affidavit:

> It is my understanding and recollection from talking with the industry association's and manufacturer's representatives that the location and direction of a crack in GWB could not be predicted with certainty. It is my understanding based on my education and experience as a civil engineer, as well as my experience in structural engineering, that the purpose of a control joint in GWB is to relieve stress forces in large expanses of a wall to prevent cracking that may result from those stresses. It is my belief and understanding that a control joint that is not extended above the suspended ceiling to include the entire height of the wall above would allow stresses to accumulate in the GWB above the ceiling with the potential to create cracks. A crack that may develop in the GWB above the suspended ceiling need not occur in line with the control joint below, and could potentially propagate below the ceiling into the exposed, occupied area of the building, defeating the purpose of a control joint. As such, it is my understanding that the ceiling to which a control joint should extend, as referenced in the contract specifications and the industry publications and standards, necessarily refers to the ceiling at the top of the GWB wall. On this project that would be the structural or GWB ceiling, and not only to the suspended acoustical tile ceiling.

(Ex. G-11, ¶ 5) Unlike in his vague QAR report (finding 37), Mr. Sarwas did not state in his affidavit that any cracks had occurred prior to the installation of the additional control joints directed by the ERO.

44. Mr. Kloepfer avers in his affidavit:

> 14. ERO 1885 . . . misrepresented the ASTM standards pertaining to control joints, stating:
>
> > The ASTM references to control joints are **drawn with a hard ceiling** and the GWB stopping at that ceiling.
>
> From my review of the ASTM references to control joints, I concluded that (1) there are no drawings depicting the installation of GWB control joints in any of these references, and (2) the ASTM references to control joints do not distinguish between different types of ceilings. . . .
>
> 15. The extension of control joints beyond the ceiling to the walk-on deck serves no apparent purpose. In my opinion as a contractor experienced in these matters, the installation of the control joints from floor to ceiling satisfied the requirements of the contract documents for control joints, which was to prevent cracking in the GWB. It was not a requirement of the contract documents to extend control joints beyond the ceiling.
>
> 16. Contrary to . . . ERO 1885, GWB does not generally crack downward from the ceiling line. Rather, if a crack develops, it will seek the area that offers the least resistance to its travel. Accordingly, cracks will generally move upwards towards the free end of the GWB beneath the walk-on deck. Therefore, the scenario the Government sought to prevent was not one normally occuring [sic] given the material properties of GWB.

(Kloepfer aff., ¶¶ 14-16)

DISCUSSION

Appellant alleges, among other things, that PPSI's contract interpretation that control joints were to be installed from floor to ceiling, or door frame to ceiling, is "the only reasonable interpretation" (app. br. at 17); it is based upon manufacturer USGC's published recommendations and ASTM C 840; there was no contractual requirement that control joints be extended to the walk-on deck, which is above and distinct from the

ceiling; and, if the government had intended such a requirement, it should have drafted the contract accordingly. Alternatively, appellant alleges that, if the contract is deemed to be ambiguous, its interpretation prevails.

The government contends that the contract requirement for control joints, which it describes as "located above the suspended ceiling to the overhead structural deck" (gov't br. at 79), is "clear when all relevant information is considered;" that the joints were required by industry standard and were structurally necessary; or that the appeal should be denied for the "perhaps most compelling" reason that, assuming the contract is ambiguous, appellant has not shown that it relied in bidding upon PPSI's interpretation (gov't br. at 86).

As we noted in ASBCA No. 53153, above, a contract provision is ambiguous if it is subject to more than one reasonable interpretation. In this appeal, the parties have addressed industry practice, and the government, in particular, has relied upon it in support of its contract interpretation concerning control joint requirements. Industry practice is irrelevant, and cannot vary or contradict, government contract language that is unambiguous on its face. *Jowett, Inc. v. United States*, 234 F.3d 1365, 1369 (Fed. Cir. 2000); *Tomahawk Construction Co.*, ASBCA No. 41717, 93-3 BCA ¶ 26,219 at 130,487; *Riley Stoker Corp.*, ASBCA No. 37019, 92-3 BCA ¶ 25,143 at 125,327. However, the Board can receive evidence of trade practice to attempt to resolve an ambiguity or to determine whether a seemingly unambiguous contract provision has a trade meaning that differs from its ordinary meaning and is, in fact, ambiguous. *HPI/GSA-3C, LLC. v. Perry*, 364 F.3d 1327, 1334 (Fed. Cir. 2004); *Metric Constructors, Inc.*, *supra*, 169 F.3d at 753; *Tomahawk Construction Co.*, *supra*, 93-3 BCA at 130,487. Knowledge of trade practice will be presumed when the evidence shows that it is an established, well-defined and well-recognized one and, when there is no contract provision that expressly or impliedly precludes resort to such practice, it may reasonably be relied upon. *Gholson, Byars and Holmes Construction Co. v. United States*, 351 F.2d 987, 1000 (Ct. Cl. 1965); *Riley Stoker Corp., supra*, 92-3 BCA at 125,328-29.

The GWB specification, TS 09250, states at paragraph 3.9g. that the contractor is to ensure that control joints are installed where required. Paragraph 3.2 states that they are to be installed as recommended by the manufacturer and in accordance with ASTM C 840 and, additionally, that door frames of less than "ceiling height" may be used as control joints only if standard control joints extend to the "ceiling" from the corners of the top of the door frame. Paragraph 3.3 does not address control joint installation directly. It states that GWB is to be applied to framing and furring members in accordance with ASTM C 840 and that, in vertical application of GWB, the panels are to be of the length required to reach the full height of vertical surfaces in one continuous piece. (Finding 28) In sum, to the extent it refers to control joints, TS 09250 focuses upon "ceiling height."

With respect to the recommendations of the control joint manufacturer, incorporated into TS 09250, manufacturer USGC states in its Gypsum Construction Handbook that the joints are used to relieve stresses induced by expansion and contraction across the control joint in large wall expanses, and that they are used from door header to "ceiling" or from floor to "ceiling" in long partitions and wall furring runs. The handbook provides that control joints should be used in the face of gypsum partitions when the size of the surface exceeds 30 feet maximum in either direction. It adds that "ceiling-height" door frames may be used as vertical control joints for partitions, but that door frames of lesser height are to be used only if standard control joints extend to the "ceiling" from both corners of the top of the door frame. Thus, like the contract specification, the handbook focuses upon "ceiling height." (Finding 29)

ASTM C 840, incorporated into TS 09250, provides that control joints are to be installed in partition, wall and wall furring runs exceeding 30 feet and that there are to be no more than 30 feet between control joints in walls. The provision notes that wall or partition height door frames may be considered a control joint. In context, we have found that "partition height" refers to "ceiling height." (Finding 30) Thus, like TS 09250 and USGC's Handbook, the ASTM provision focuses upon ceiling height with respect to control joint installation.

The contract called for suspended acoustical tile ceilings for the typical rooms at issue, with ceiling heights ranging from 8 through 10 feet. One or more doors were to be installed in the rooms. There is no evidence that there were any walls over 30 feet long that did not involve door frames considered as control joints, or original control joints. The DZ's walk-on deck is above, and distinct from, the contract-scheduled ceilings. (Findings 31, 32)

Contemporaneously, in contrast to QAR Sarwas' affidavit, and to the government's contention on appeal that the walk-on deck was a "ceiling" within the meaning of the contract's control joint requirements, the only "ceiling" Mr. Sarwas referred to in his reports was the contract-scheduled ceiling (findings 34, 35). Indeed, Mr. Sarwas states in his affidavit that TS 09250 and ASTM C 840 "did not clearly define the vertical limit of a control joint nor differentiate between structural or acoustical ceilings with respect to control joints" (*id.*). Accordingly, he sought oral advice from two unidentified USGC and GA representatives, who did not submit sworn statements (*id.*). We give this general hearsay little weight and determine that it is insufficient to show an established, well-defined, and well-recognized industry practice.

Further, although Mr. Sarwas is an experienced engineer, we accord little weight to the balance of his affidavit alleging that cracks might potentially develop and propagate downward into the CMF facility's occupied zone if control joints were not

extended to the distribution zone's walk-on deck. Unlike in his vague QAR report, Mr. Sarwas does not state in his affidavit that any cracks had occurred prior to the installation of the additional control joints directed by the ERO. His affidavit is cast in speculative terms and has been rebutted by that of Mr. Kloepfer. (*See* findings 43, 44).

We conclude that appellant's interpretation of the contract's control joint requirements as being based upon the contract-scheduled ceiling height is reasonable, and that the government's interpretation that the contract clearly requires control joints beyond the ceilings to the walk-on deck, is not reasonable. When a contractor's interpretation is the only reasonable one, the contractor is not required to prove that it or its subcontractor relied upon its proffered interpretation at the time of bid to the government.

Appellant is entitled to an equitable adjustment.

DECISION

ASBCA No. 53182 is sustained and remanded for quantum resolution.

SUMMARY

ASBCA Nos. 53146 and 53182 are sustained and remanded for quantum resolution; ASBCA No. 53153 is sustained to the extent that the government has acknowledged liability for extra costs, which is remanded for quantum resolution - the appeal is otherwise denied; ASBCA No. 53180 is denied.

Dated: 7 January 2005

CHERYL SCOTT ROME
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

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

I concur

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 Nos. 53146, 53153, 53180, 53182, Appeals of M.A. Mortenson Company, rendered in conformance with the Board's Charter.

Dated:

CATHERINE A. STANTON
Recorder, Armed Services
Board of Contract Appeals