

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

GRANTED IN PART: September 20, 2006

GSBCA 16756

HOOK CONSTRUCTION, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Kenneth R. Hook, Vice President of Hook Construction, Inc., Solon, IA, appearing for Appellant.

Mark R. Warnick, Office of Regional Counsel, General Services Administration, Kansas City, MO, counsel for Respondent.

Before Board Judges **PARKER**, **DEGRAFF**, and **GOODMAN**.

PARKER, Board Judge.

Hook Construction, Inc. (Hook) has appealed the decision of a General Services Administration (GSA) contracting officer denying Hook's claim for extra work performed in connection with a contract for minor renovations at the United States Courthouse in Cedar Rapids, Iowa. We grant in part the appeal.

Findings of Fact

Hook's contract required the contractor to install wall covering in a judge's chambers. Specification Section 09720 - Wall Coverings, paragraph 3.1 - Examination, required the contractor to:

- A. Examine substrates and conditions, with installer present, for compliance with requirements for levelness, wall plumbness, maximum moisture content, and other conditions affecting performance of work.
- B. Proceed with installation only after unsatisfactory conditions have been corrected.

Appeal File, Exhibit 1. Specification Section 09720 - Wall Coverings, paragraph 3.2 - Preparation, required the contractor to:

- A. Comply with manufacturer's written instructions for surface preparation.
- B. Clean substrates of substances that could impair wall covering's bond, including mold, mildew, oil, grease, incompatible primers, dirt, and dust.
- C. Prepare substrates to achieve a smooth, dry, clean, structurally sound surface free of flaking, unsound coatings, cracks, and defects.

Id. The contract also contained a warranty provision:

FAR 52.246-21 WARRANTY OF CONSTRUCTION (MAR 1994) -
ALTERNATE 1 (APR 1984)

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of—

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

Id.

Hook completed the wall covering installation on March 8, 2004. On February 18, 2005, shortly after discovering that the wall covering was delaminating at the seams, GSA's project manager notified Hook of the problem. The reason, according to both parties, was that the painted plaster surface on which the wall covering was installed was pulling away from the wall, causing the wall covering to separate at the seams. Hook's owner testified:

. . . the two painters, the installers are theorizing that at the joint as this wall covering dries over, you know, the life of the paper, it has a tension on it.

So, in other words, what they're saying is you put it on and the paste softens the paper a little bit, it stretches and adheres, but as it dries, it wants to shrink, but the wall covering paste holds it in place, and what it is is just enough tension, they think, that the -- it pulled the old paint loose from the plaster.

Transcript at 13. Hook speculates that water damage may have been a factor. GSA's inspection found no water damage, and no separation of the wall covering from its backing material. GSA determined that the problem was caused by Hook's failure to prepare properly the wall surface prior to installing the wall covering. According to Hook's president:

We took off all the loose paint that we could find and that's normal procedure. I mean, we wouldn't go back and strip off paint that's, you know, still really stuck. I mean, you know, that'd be costs that the GSA would have to pay, you know. We'd have to spell it out a little better in the bid documents and it's, you know, just something you don't do and it's money that would be most of the time wasted.

Id. at 30.

Hook was given until May 6, 2005, to remedy the problem. The company replaced the defective wall covering and also installed at the Government's request additional wall covering to match the newly-replaced covering (the replaced wall covering had not yet been faded by the sun and no longer matched the covering on the rest of the wall).

Hook submitted an invoice in the amount of \$3269.67 for the work. The invoice stated that the problem was a result of the existing paint coming loose from the plaster walls, implying that the repair was not the responsibility of Hook under the warranty clause of the contract. Of the total amount, \$1059.92 was for installation of the additional wall covering to match the repaired area. GSA does not dispute that Hook is owed \$1059.92 for the additional wall covering installation, but disputes Hook's entitlement to the cost of repairing the delaminated wall covering.

Discussion

To prove application of the warranty provision, the Government must prove three elements. First, GSA must show that furnishing the defective materials or workmanship was the responsibility of the contractor. The Government need not be explicit on this score -- it is sufficient for it to show, by a preponderance of the evidence, that defective material or workmanship was the most probable cause of the failure when considered with any other possible causes. Second, the Government must show that the required notice was given within the time periods prescribed by the warranty clause. Finally, the Government must show that it did not cause or contribute to the failures or defects. *ABM/Ansley Business Materials v. General Services Administration*, GSBCA 9367, 93-1 BCA ¶ 25,246 (1992); *Joseph Penner*, GSBCA 4647, 80-2 BCA ¶ 14,604.

As to the first issue, we find that GSA has shown by a preponderance of the evidence that a defect in workmanship was the most probable cause of the wall covering becoming delaminated. The contract required Hook to “examine the substrates” for “conditions affecting performance of the work” and to “proceed with installation only after unsatisfactory conditions have been corrected.” Hook was also required to “prepare substrates to achieve a smooth, dry, clean, structurally sound surface free of flaking, unsound coatings, cracks, and defects.” When the wall covering delaminated within the one-year warranty period, the Government’s inspection showed no water leakage or other condition that had changed between the time the wall covering was installed and the time it delaminated. Both parties agreed that the painted plaster surface on which the wall covering was installed was pulling away from the wall, causing the wall covering to separate at the seams.

GSA has shown that the most likely cause of the delamination was Hook’s failure to comply with the contract’s requirement to correct any unsatisfactory conditions before proceeding with the work. Hook’s acknowledgment that it did not strip off all of the old paint because “that’d be costs that the GSA would have to pay” demonstrates the company’s misunderstanding of the contract’s requirements. It was Hook’s responsibility to examine the pre-existing conditions and make certain that any unsatisfactory conditions were corrected prior to installation of the wall covering. If the existing paint was not sound enough to last at least one year (“unsound coating”), Hook should not have installed the wall covering without correcting the situation, or at least bringing the matter to GSA’s attention, even if it might have resulted in GSA having to pay additional costs. Once wall covering has been installed, correcting an underlying problem becomes substantially more expensive.

As to the second element that must be proved by the Government, it is clear that the problem arose within the contract’s one-year warranty period and that GSA notified Hook of its warranty claim within a reasonable time after discovering the problem. Finally, as to the third element, there is no credible evidence that the Government caused or contributed to the failure.

Decision

For the reasons discussed, the appeal is **GRANTED IN PART**. We deny Hook's claim for costs incurred in replacing the delaminated wall covering. Because GSA does not dispute Hook's claim for the costs of installing additional wall covering to match the un-faded replacement covering, we award Hook the requested amount of \$1059.92 for that work, plus interest in accordance with the Contract Disputes Act of 1978, 41 U.S.C. § 611 (2000).

ROBERT W. PARKER
Board Judge

We concur:

MARTHA H. DEGRAFF
Board Judge

ALLAN H. GOODMAN
Board Judge