



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

**Department of
Administration**

DIVISION OF GENERAL SERVICES

550 West 7th Avenue, Suite 1970
Anchorage, Alaska 99501
Main: 907.269.0303
Fax: 907.269.0308
www.doa.alaska.gov/dgs

CERTIFIED MAIL NO. 7012-2210-0002-6512-3721
RETURN RECEIPT REQUESTED

January 6, 2014

Mr. Jason Murdoch
Alaska Commercial Contractors, Inc.
PO Box 32878
Juneau, AK 99803

**Subject: Contracting Officer's Decision, 2011-0222-9843
Governor's House Exterior Improvements – EPA Penalties**

Dear Mr. Murdoch:

The State of Alaska, Department of Administration, Division of General Services (SOA) is in receipt of your October 8, 2013 contract claim. This letter serves as a response and decision to that claim under AS 36.30.620.

Alaska Commercial Contractors, Inc. (ACC) claims the following:

1. SOA issued a project that included hazardous materials in the scope without providing a hazardous materials specification or hiring a consultant specializing in hazardous materials to review the bid documents.
2. SOA withheld information by not providing execution requirements in the specifications to include RRP Certification requirements as issued in other bid documents on the same building.
3. SOA ignored repeated attempts to sign documentation required to comply with the RRP rule.
4. SOA misled offerors at pre-bid conferences through express representations that the project did not include lead removal, which then led to discussions between materials representatives and bidders for paint removal practices that violated EPA and OSHA standards when lead paint is in fact present.

ACC has requested that SOA pay \$151,256.63 representing 100% of the U.S. Environmental Protection Agency (EPA) penalties assessed to ACC and its subcontractor Vanpool Painting, as well as all costs ACC claims to have incurred negotiating with EPA, obtaining the required certifications, and performing extra work required to comply with the federal regulations.

The following determination is based upon a full review of ACC's claim and all supporting documents. For clarity, we have analyzed the claim issues in a different order from the presentation in the claim.

1. **SOA misled offerors at pre-bid conferences through express representations that the project did not include lead removal, which then led to discussions between materials representatives and bidders for paint removal practices that violated EPA and OSHA standards when lead paint is in fact present.**

Mr. Jason Murdoch
January 6, 2013

Page 2 of 7

SOA's request for proposals made all offerors plainly aware of the presence of lead paint. ACC alleges that SOA Contracting Officer John Schauwecker made a statement at the Pre-Proposal Conference that "this is not a lead job." ACC did not provide contemporaneous notes, minutes or other evidence to support this allegation; even if the statement was accurately reported by ACC, however, the explicit terms of the RFP and detailed information within the RFP and contract would prohibit ACC from relying on the statement Mr. Schauwecker allegedly made.

RFP Section 00022 (Proposal Submittal Checklist), Item 2 (Preparation of Proposals) clearly states:

Oral explanations or instructions given before the award of the contract will not be binding.

Thus, ACC cannot base a claim of reliance on Mr. Schauwecker's purported pre-proposal statement that "this is not a lead job." More importantly, even if Mr. Schauwecker made this misstatement at the Pre-proposal Conference, detailed and accurate information on the presence of lead was subsequently issued in Addendum 1. That addendum included a revised Section 01732 (Selective Demolition) that included the following:

Hazardous Materials: Hazardous materials are present in buildings and structures to be selectively demolished.

1. A report on the presence of lead based paint is attached to this section for review and use. Examine report to become aware of locations where hazardous materials are present.

2. Attached to this section is a TCLP test that was conducted on the composite paint material removed and it indicated that the composite was below the action level and could be disposed in a landfill without being considered hazardous. The Contractor must monitor this condition and should conduct additional test if the make-up of the material to be disposed changes.

3. A report indicating that the stucco does not contain asbestos is also attached to this section for review and use.

Regulatory Requirements: Comply with governing EPA notification regulations before beginning selective demolition. Comply with hauling and disposal regulations of authorities having jurisdiction.

Addendum 1 also included a Lead Based Paint Survey for the Governor's Mansion dated March 1, 2010. Section 4.1 on page 3 of the survey says:

The results of the survey indicate that the original painted exterior components of this building should all be considered to contain lead-based paint.

ACC acknowledged receipt of Addendum 1 and further confirmed their knowledge of lead paint at the site in Jason Murdoch's email of April 27, 2011 when he said:

The Governors house has had previous lead tests that show there is lead in the paint, however the levels of lead found in the tests are below the regulatory limit.

ACC was clearly aware of the presence of lead paint at the site, and had lead paint surveys in their possession prior to submitting its proposal.

ACC also argues that SOA's representations that the project did not include lead paint removal resulted in discussions between materials representatives and offerors about paint removal processes that could not be used where lead paint existed. Being that there were only three days between the alleged misstatement by Mr. Schauwecker on November 30th, 2010 and the issuance of Addendum #1 on December 3, 2010 that corrected any alleged misstatement, it is not apparent from the claim how this extremely brief period of misinformation resulted in damages to ACC. Undoubtedly, as of December 3, 2010, the areas where lead paint existed were identified in the Lead Based Paint Survey, so ACC was aware of the areas that certain removal techniques could not be used.

Therefore, Mr. Schauwecker's statement on November 30th, 2010—even if accurately reported by ACC—would not be sufficient to support ACC's claim.

2. SOA issued a project that included hazardous materials in the scope without providing a hazardous materials specification or hiring a consultant specializing in hazardous materials to review the bid documents.

All offerors were aware of the presence of lead paint at the site on December 3, 2010, six weeks prior to the offer deadline on January 13, 2011. If ACC felt that the specifications were insufficient for completing the project – knowing that lead paint was present at the project – the RFP required that ACC notify SOA in writing ten working days prior to the submittal deadline. RFP Section 00022 (Proposal Submittal Checklist), Item 2 (Preparation of Proposals) states:

Protests based upon any omission, error or content of this solicitation may be disallowed at the discretion of the contracting agency if the protest is not received in writing at least ten agency work days prior to the submittal deadline (2 AAC 12.615(a)).

The quoted section is in bold and italics in the RFP to stress the importance of notifying SOA so an amendment can be issued prior to the submittal of proposals if there are omissions, errors or content issues. The claim on this issue should be denied on that basis alone since SOA had no opportunity to amend the specifications. With that said, the state disagrees that the specifications were inadequate.

SOA made prospective offerors fully aware of the presence of lead paint in the RFP's Addendum #1. The RFP was also quite clear that the offerors is solely responsible for its compliance with all applicable laws. RFP Section 00020 (Request for Proposal) states the following in the description of work:

Contractor to perform all Work as described within the Request for Proposal Documents and must conform with all applicable Federal, State and Local codes having jurisdiction.

RFP Section 00070 (General Conditions), Article 7 (Laws and Regulations) states:

7.1 Laws to be Observed

The CONTRACTOR shall keep fully informed of all federal and state Regulatory Requirements and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the Work, or which in any way affect the conduct of the Work. The CONTRACTOR shall at all times observe and comply with all such Regulatory Requirements, orders and decrees; and shall protect and indemnify the DEPARTMENT and its representatives against claim or liability arising from or based on the violation of any such Regulatory Requirement, order, or decree whether by the CONTRACTOR, Subcontractor, or any employee of either. Except where otherwise expressly required by applicable Regulatory Requirements, the DEPARTMENT shall not be responsible for monitoring CONTRACTOR's compliance with any Regulatory Requirements.

and,

7.2 Permits, Licenses, and Taxes

7.2.1 The CONTRACTOR shall procure all permits and licenses, pay all charges, fees and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the Work. As a condition of performance of this Contract, the CONTRACTOR shall pay all federal, state and local taxes incurred by the CONTRACTOR, in the performance of this Contract. Proof of payment of these taxes is a condition precedent to final payment by the DEPARTMENT under this Contract.

ACC also incorrectly alleges that SOA did not hire a consultant specializing in hazardous materials to review the bid documents. The technical specifications were drafted and reviewed by Jensen Yorba Lott, Inc. (JYL) and Carson Dorn. SOA and its consultants specifically reviewed the RFP's Addendum #1, which gave detailed information about the presence of lead paint at the site. Thus, the claim on this issue has no basis.

Ultimately, ACC and Vanpool Painting were cited by the EPA for non-compliance with regulations governing contractors' renovation of historic homes. These EPA regulations govern the conduct and practices of contractors, not the actions of practices of a building's owner. The Contract requires ACC to "keep fully informed of all federal and state Regulatory Requirements ... and comply with all such Regulatory Requirements." Thus, in the same way that the Contract requires ACC to comply with state and federal licensing, work safety, and environmental requirements—without having individual specifications directing compliance of each—the Contract requires ACC to keep fully informed of and in compliance with regulatory requirements governing the renovation of historic structures.

Therefore, the absence of a hazardous materials specification provides no support for ACC's claim.

3. SOA withheld information by not providing execution requirements in the specifications to include RRP Certification requirements as issued in other bid documents on the same building.

ACC based their claim on alleged misrepresentations by SOA about the site conditions, particularly the absence of lead paint. However 40 C.F.R. 745 makes it clear that the certifications, as well as any special rules that would apply to the work, were required simply based on the age of the residence and the type of work being done.

40 C.F.R. 745.103 defines "Target housing" as "any housing constructed prior to 1978 except housing for the elderly or persons with disabilities..."

40 C.F.R. 745.83 defines "Renovation" as "the modification of any existing structure, or portion thereof that results in the disturbance of painted surfaces..."

The Governor's House was constructed in 1912 and the work to be performed under this contract was to remove the existing paint and repaint the residence, so the project was clearly a renovation of target housing irrespective of the presence of lead paint.

40 C.F.R. 745.81(a)(2)(ii) requires that "a firm that performs, offers, or claims to perform renovations in target housing or child occupied facilities for compensation must first obtain initial certification from the EPA."

40 C.F.R. 745.89(d)(1) requires that firms ensure that "all individuals performing activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with 40 C.F.R. 745.90."

The contractor was negligent in its review and compliance with the applicable federal regulations that applied to performing work on a residential structure that was constructed prior to 1978. The presence or absence of

Mr. Jason Murdoch
January 6, 2013

Page 5 of 7

lead paint at the residence was not a factor in EPA assessing the penalties to ACC and Vanpool for not having the required certifications – it was the age of the residence. ACC had an obligation and a responsibility to know the applicable regulations and certifications required to paint a house that was constructed in 1912.

ACC states in its claim that they mobilized on April 2, 2011 without the EPA certifications required by 40 C.F.R. 745. It was this activity beginning April 2nd that resulted in the EPA assessing penalties related to not having the required certifications. Jason Murdoch's email to SOA Leasing & Facilities Manager Tanci Mintz dated April 27th confirms that ACC still had not reviewed the regulations that applied to renovations on residences constructed prior to 1978. He states that this is not a lead abatement project and that a certificate is not required because the levels of lead at the Governor's House are below the regulatory limit and there are no children under the age of six living in the building. The SOA initially concurred internally with Mr. Murdoch's assessment – see 4/28 emails from Carson Dorn to Tanci Mintz – but informed Mr. Murdoch on May 6th (by Dan Aicher per ACC's claim) and on May 10th via email from Tanci Mintz that the earlier information ACC provided to SOA was not correct and that certifications were required.

ACC cites the lack of any mention in the RFP of EPA certifications being required for this project as evidence that the SOA misrepresented the conditions at the site. It references a subsequent RFP for work at the Governor's House that included specific language about the need for certain EPA certifications. SOA has no obligation to cite all federal regulations or certifications in the RFP that may be required for the project. The RFP clearly places that responsibility on the contractor.

40 C.F.R 745 also places the responsibility for compliance with those performing the work, which is why EPA filed the complaint against ACC and not SOA. After additional and thorough review of the violations and penalties by EPA, their final decision continued to place the fault for the violations with ACC and its subcontractor. No complaints were filed against SOA by EPA, nor were any penalties assessed by EPA on SOA, yet ACC continues to assume no responsibility for failing to comply with federal regulations as required by the RFP, the resulting contract, and by EPA.

As the Contract required ACC to keep fully informed of and remain in compliance with regulatory requirements governing the renovation of historic structures, it was not SOA's responsibility under the Contract to provide step-by-step instructions on the requirements for an RRP Certification. ACC was made aware of the presence of lead at the project site, through Addendum #1, six weeks prior to the deadline for proposals. As ACC was given ample notice of the presence of lead, and the requirement that the contractor must obtain all regulatory approvals, the absence of RRP Certification instructions in the RFP provides no basis for ACC's claim.

4. SOA ignored repeated attempts to sign documentation required to comply with the RRP rule.

ACC was cited by the EPA for not having the certifications when the work began on April 2, 2011, not because of any alleged delays executing the Renovate Right Brochure. SOA denies that there was an unreasonable delay - but even if there had been, a review of the EPA final consent orders provided with the claim shows that the EPA does not assess any penalties or costs based on the processing of the Renovate Right Brochure. Therefore, any possible delay by the State in signing the Renovate Right Brochure did not result in economic harm to ACC and would not support ACC's claim.

Mr. Jason Murdoch
January 6, 2013

Page 6 of 7

Additional Discussion

The Requested Compensation Includes Amounts Settled in a Previous Claim

The requested compensation includes \$43,520 for additional costs that ACC subcontractor Vanpool Painting claimed it incurred for labor and materials related to work. The State has clearly shown that ACC was well aware of the presence of lead paint six weeks prior to submitting its offer, so there was no change in scope as claimed by ACC. Even if there had been a change in scope that would have required the contractor to incur additional costs, the RFP clearly requires that a change order be executed prior to proceeding. RFP Section 00700 (General Conditions) Article 8 (Other Work) states:

8.1.4 If the fact that such other work is to be performed was not identified or shown in the Contract Documents, written notice thereof will be given to the CONTRACTOR prior to starting any such other work. If the CONTRACTOR believes that such performance will require an increase in Contract Price or Contract Time, the CONTRACTOR shall notify the Contracting Officer of such required increase within fifteen (15) calendar days following receipt of the Contracting Officer's notice. Should the Contracting Officer find such increase(s) to be justified, a Change Order will be executed.

RFP Section 00700 (General Conditions) Article 9 (Changes) states:

9.3.6 If the CONTRACTOR believes that the changes noted in a Directive may cause an increase in the Contract Price or an extension of Contract Time, the CONTRACTOR shall immediately provide written notice to the Contracting Officer depicting such increases before proceeding with the Directive, except in the case of an emergency. If the Contracting Officer finds the increase in Contract Price or the extension of Contract Time justified, a Change Order will be issued. If however, the Contracting Officer does not find that a Change Order is justified, the Contracting Officer may direct the CONTRACTOR to proceed with the Work. The CONTRACTOR shall cooperate with the Contracting Officer in keeping complete daily records of the cost of such Work. If a Change Order is ultimately determined to be justified, in the absence of agreed prices and unit prices, payment for such Work will be made on a "cost of the work basis" as provided in 10.4

and,

9.4 Change Order

For changes within the scope of the Work, a change in Contract Time, Contract Price, or responsibility may be made only by Change Order. Upon receipt of an executed Change Order, the CONTRACTOR shall promptly proceed with the Work involved that will be performed under the applicable conditions of the Contract Documents except as otherwise specifically provided. Changes in Contract Price and Contract Time shall be made in accordance with Articles 10 and 11.

and,

9.6 Changes Outside the General Scope; Supplemental Agreement

When the Contracting Officer determines that a change is outside the general scope of the Contract, it must be authorized by a Supplemental Agreement signed by the appropriate representatives of the DEPARTMENT and the CONTRACTOR.

and,

9.7 Unauthorized Work:

The CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in this Article 9, except in the case of an emergency as provided in paragraph 6.19 and except in the case of uncovering Work as provided in paragraph 12.4.2.

Mr. Jason Murdoch
January 6, 2013

Page 7 of 7

The RFP requires ACC to have an executed Change Order prior to proceeding with any work for which they will require additional compensation, regardless of whether the work was within the contract scope of work or not. There was no emergency situation that warranted ACC proceeding with work prior to a Change Order being executed. If ACC had notified SOA that they expected additional compensation prior to proceeding with this work, SOA could have explained at that time why additional compensation was not warranted prior to ACC directing their subcontractor to proceed with the work.

More importantly, these Vanpool Painting costs were already paid in full via Change Order No. 9 that related to a mutually agreeable settlement of a contract claim filed by ACC on December 14, 2011. A copy of the claim and the change order are attached. Copies of all supporting documents for the costs covered by that claim were provided by ACC at the request of SOA at that time and can be provided again to ACC upon request.

Summary

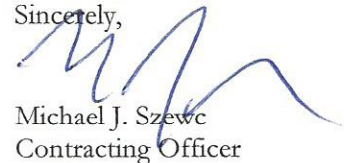
The state has determined the following:

1. ACC knew of the presence and location of lead paint at the building six weeks prior to submitting its offer.
2. ACC received written addendums and environmental reports after statements they allege were made by SOA representatives about whether lead paint was located on the site.
3. The EPA certifications were required because the project involved painting a residential dwelling that was constructed prior to 1978, whether or not lead paint was present at the site.
4. The RFP required ACC to comply with all federal regulations, which includes the regulations governing a contractor's renovation of historic residential structures.
5. EPA required the contractor performing the work to comply with all regulations governing a contractor's renovation of a historic residential structure.
6. ACC provided no evidence that additional penalties or costs were incurred from the time ACC requested SOA to sign the Renovate Right Brochure and the time it was executed by SOA, nor did they provide any evidence that the time was unreasonable.
7. ACC's subcontractor performed work without an executed change order as required by the Contract.
8. ACC is seeking reimbursement for costs already settled via a previous contract claim.

SOA has reviewed the arguments forwarded with your claim and determined that they are without merit. As such, the claim and ACC's request for additional compensation totaling \$151,256.63 are denied.

This is the final decision of the Contracting Officer. This decision may be appealed to the Commissioner of the Department of Transportation and Public Facilities. If you appeal, you must file a written notice of appeal with the Commissioner within 14 days after you receive this decision. ACC shall file a copy of the appeal with the Contracting Officer. An appeal must contain the information required under AS 36.30.625. In addition, the appeal must include a copy of the decision being appealed and identification of the factual or legal errors in the decision that form the basis for the appeal.

Sincerely,



Michael J. Szewc
Contracting Officer

Enclosures: 5

cc: Tanci Mintz, State Leasing & Facilities Manager

Exhibit A
Cited E-Mails

Jason Murdoch

From: Mintz, Tanci M (DOA) <tanci.mintz@alaska.gov>
Sent: Tuesday, May 10, 2011 4:23 PM
To: Jason Murdoch
Cc: Aicher, Daniel G (DOA); Jones, Vern O (DOA); Wayne Jensen; Disdier, Paul V (DOA)
Subject: FW: GOV HOUSE - Lead Paint Removal Certificate
Attachments: AKCCI20110427164006.pdf

Jason,

It's the State's understanding the earlier information (see below and attached) provided to our office regarding the requirement to have a Lead Paint Removal Certificate was incorrect. Please provide the correct information and all steps ACC is taking comply with EPA regulations.

Additionally, please advise if there will be any type of penalty, etc. assessed by EPA.

Tanci

FROM CARSON DORN, INC. , SIGRID IS AN ENVIORMENTAL ENGINEER:

From: Sigrid Dahlberg [mailto:sdahlberg@carsondorn.com]
Sent: Thursday, April 28, 2011 12:16 PM
To: Wayne Jensen
Cc: Mintz, Tanci M (DOA); Aicher, Daniel G (DOA)
Subject: Re: House lead paint certificate not needed

Wayne--you covered the important points. Skd

FROM JYL ARCHITECTS:

On Thu, Apr 28, 2011 at 12:12 PM, Wayne Jensen <wayne@jensenyorbalott.com> wrote:

Tanci: Sigrid left a message confirming what Jason said earlier.

1. This is not a lead abatement project because the amount of lead is below the action level.
2. A certificate is not required because the house is not occupied by children under the age of 6 for a long enough time.

Sigrid, when you return can you email you confirmation and add anything that I missed?

FROM GENERAL CONTRACTOR:

From: Jason Murdoch [mailto:jason@akcci.com]
Sent: Wednesday, April 27, 2011 4:44 PM
To: Mintz, Tanci M (DOA); Aicher, Daniel G (DOA); Disdier, Paul V (DOA); Wayne Jensen
Subject: RE: Lead Paint Removal Certificate

Hi Tanci, there is a EPA certificate that is required for lead abatement projects on Schools, Child Care Facilities, or Houses where children under six spend numerous hours inside the facility. The Governors house has had previous lead tests that show there is lead in the paint, however the levels of lead found in the tests are below the regulatory limit. Because we know there are small amounts of lead in the layers we are removing, we have

taken the extra precautions to ensure we protect the workers and the occupants of the House by having all employees take lead awareness classes, and remove the paint as if it contains lead, however because this is not a lead abatement project, tests have shown that lead levels are below regulatory limits, and there are no children under six that live in the building, there is no certification required. Please give me a call if you have any question.

Tanci Mintz
State Leasing & Facilities Manager
Department of Administration

550 West 7th Avenue Suite #1970
Anchorage AK 99501
269-0300 office
269-0308 fax
242-1044 mobile

Jason Murdoch

From: Aicher, Daniel G (DOA) <dan.aicher@alaska.gov>
Sent: Friday, May 06, 2011 4:16 PM
To: Jason Murdoch
Cc: Mintz, Tanci M (DOA)
Subject: 9843 Gov's House - Lead Renovator's Certification Needed

Hello Jason,

It is our understanding that a Lead Renovator's Certification is required for any employee working on, or who may come in contact with, a product that contains lead; in this case it is mainly the lead based paint under the stucco, window frames, and foundations. Please cease all work on the columns, window frames, foundations, and areas around any damaged stucco until one of your workers obtains the Lead Renovator's Certification.

Paul is going to physically mark out areas that are suspected to be near any lead based product. You can continue working on areas that are away from the areas suspected to contain lead.

Thank you,

Daniel Aicher | Contracting Officer
State of Alaska DOA/DGS
907.269.0304 office
907.602.2927 mobile

Exhibit B

Cited 40 CFR 745 Sections

§745.81 Effective dates.

(a) *Training, certification and accreditation requirements and work practice standards.* The training, certification and accreditation requirements and work practice standards in this subpart are applicable in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part. The training, certification and accreditation requirements and work practice standards in this subpart will become effective as follows:

(1) *Training programs.* Effective June 23, 2008, no training program may provide, offer, or claim to provide training or refresher training for EPA certification as a renovator or a dust sampling technician without accreditation from EPA under §745.225. Training programs may apply for accreditation under §745.225 beginning April 22, 2009.

(2) *Firms.* (i) Firms may apply for certification under §745.89 beginning October 22, 2009.

(ii) On or after April 22, 2010, no firm may perform, offer, or claim to perform renovations without certification from EPA under §745.89 in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in §745.82(a) or (c).

§745.83 Definitions.

For purposes of this part, the definitions in §745.103 as well as the following definitions apply:

Administrator means the Administrator of the Environmental Protection Agency.

Child-occupied facility means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.

Cleaning verification card means a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether post-renovation cleaning has been properly completed.

Component or building component means specific design or structural elements or fixtures of a building or residential dwelling that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: Ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as: Painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, windowsills or stools and troughs, casings, sashes and wells, and air conditioners.

Dry disposable cleaning cloth means a commercially available dry, electrostatically charged, white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

Firm means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

HEPA vacuum means a vacuum cleaner which has been designed with a high-efficiency particulate air (HEPA) filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing particulates of 0.3 microns with 99.97% efficiency. The vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it. HEPA vacuums must be operated and maintained in accordance with the manufacturer's instructions.

Interim controls means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

Minor repair and maintenance activities are activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by §745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

Painted surface means a component surface covered in whole or in part with paint or other surface coatings.

Pamphlet means the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* developed under section 406(a) of TSCA for use in complying with section 406(b) of TSCA, or any State or Tribal pamphlet approved by EPA pursuant to [40 CFR 745.326](#) that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information). Before December 22, 2008, the term "pamphlet" also means any pamphlet developed by EPA under section 406 (a) of TSCA or any State or Tribal pamphlet approved by EPA pursuant to §745.326.

Person means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

Recognized test kit means a commercially available kit recognized by EPA under §745.88 as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 1.0 milligrams per square centimeter, or more than 0.5% lead by weight, in a paint chip, paint powder, or painted surface.

Renovation means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by this part ([40 CFR 745.223](#)). The term renovation includes (but is not limited to): The removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping), and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this subpart. The term renovation does not include minor repair and maintenance activities.

Renovator means an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by EPA or an EPA-authorized State or Tribal program.

Training hour means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.

Wet disposable cleaning cloth means a commercially available, pre-moistened white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

Vertical containment means a vertical barrier consisting of plastic sheeting or other impermeable material over scaffolding or a rigid frame, or an equivalent system of containing the work area. Vertical containment is required for some exterior renovations but it may be used on any renovation.

Wet mopping system means a device with the following characteristics: A long handle, a mop head designed to be used with disposable absorbent cleaning pads, a reservoir for cleaning solution, and a built-in mechanism for distributing or spraying the cleaning solution onto a floor, or a method of equivalent efficacy.

Work area means the area that the certified renovator establishes to contain the dust and debris generated by a renovation.

[63 FR 29919, June 1, 1998, as amended at 73 FR 21758, Apr. 22, 2008; 76 FR 47938, Aug. 5, 2011]

§745.89 Firm certification.

(a) *Initial certification.* (1) Firms that perform renovations for compensation must apply to EPA for certification to perform renovations or dust sampling. To apply, a firm must submit to EPA a completed "Application for Firms," signed by an authorized agent of the firm, and pay at least the correct amount of fees. If a firm pays more than the correct amount of fees, EPA will reimburse the firm for the excess amount.

(2) After EPA receives a firm's application, EPA will take one of the following actions within 90 days of the date the application is received:

(i) EPA will approve a firm's application if EPA determines that it is complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. An application is complete if it contains all of the information requested on the form and includes at least the correct amount of fees. When EPA approves a firm's application, EPA will issue the firm a certificate with an expiration date not more than 5 years from the date the application is approved. EPA certification allows the firm to perform renovations covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(ii) EPA will request a firm to supplement its application if EPA determines that the application is incomplete. If EPA requests a firm to supplement its application, the firm must submit the requested information or pay the additional fees within 30 days of the date of the request.

(iii) EPA will not approve a firm's application if the firm does not supplement its application in accordance with paragraph (a)(2)(ii) of this section or if EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. EPA will send the firm a letter giving the reason for not approving the application. EPA will not refund the application fees. A firm may reapply for certification at any time by filing a new, complete application that includes the correct amount of fees.

(b) *Re-certification.* To maintain its certification, a firm must be re-certified by EPA every 5 years.

(1) *Timely and complete application.* To be re-certified, a firm must submit a complete application for re-certification. A complete application for re-certification includes a completed "Application for Firms" which contains all of the information requested by the form and is signed by an authorized agent of the firm, noting on the form that it is submitted as a re-certification. A complete application must also include at least the correct amount of fees. If a firm pays more than the correct amount of fees, EPA will reimburse the firm for the excess amount.

(i) An application for re-certification is timely if it is postmarked 90 days or more before the date the firm's current certification expires. If the firm's application is complete and timely, the firm's current certification will remain in effect until its expiration date or until EPA has made a final decision to approve or disapprove the re-certification application, whichever is later.

(ii) If the firm submits a complete re-certification application less than 90 days before its current certification expires, and EPA does not approve the application before the expiration date, the firm's current certification will expire and the firm will not be able to conduct renovations until EPA approves its re-certification application.

(iii) If the firm fails to obtain recertification before the firm's current certification expires, the firm must not perform renovations or dust sampling until it is certified anew pursuant to paragraph (a) of this section.

(2) *EPA action on an application.* After EPA receives a firm's application for re-certification, EPA will review the application and take one of the following actions within 90 days of receipt:

(i) EPA will approve a firm's application if EPA determines that it is timely and complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. When EPA approves a firm's application for re-certification, EPA will issue the firm a new certificate with an expiration date 5 years from the date that the firm's current certification expires. EPA certification allows the firm to perform renovations or dust sampling covered by this section in any State or Indian Tribal area that does not have a renovation program that is authorized under subpart Q of this part.

(ii) EPA will request a firm to supplement its application if EPA determines that the application is incomplete.

(iii) EPA will not approve a firm's application if it is not received or is not complete as of the date that the firm's current certification expires, or if EPA determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. EPA will send the firm a letter giving the reason for not approving the application. EPA will not refund the application fees. A firm may reapply for certification at any time by filing a new application and paying the correct amount of fees.

(c) *Amendment of certification.* A firm must amend its certification within 90 days of the date a change occurs to information included in the firm's most recent application. If the firm fails to amend its certification within 90 days of the date the change occurs, the firm may not perform renovations or dust sampling until its certification is amended.

(1) To amend a certification, a firm must submit a completed "Application for Firms," signed by an authorized agent of the firm, noting on the form that it is submitted as an amendment and indicating the information that has changed. The firm must also pay at least the correct amount of fees.

(2) If additional information is needed to process the amendment, or the firm did not pay the correct amount of fees, EPA will request the firm to submit the necessary information or fees. The firm's certification is not amended until the firm complies with the request.

(3) Amending a certification does not affect the certification expiration date.

(d) *Firm responsibilities.* Firms performing renovations must ensure that:

(1) All individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with §745.90.

(2) A certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in §745.90.

(3) All renovations performed by the firm are performed in accordance with the work practice standards in §745.85.

(4) The pre-renovation education requirements of §745.84 have been performed.

(5) The recordkeeping requirements of §745.86 are met.

[73 FR 21764, Apr. 22, 2008]

§745.103 Definitions.

The following definitions apply to this subpart.

The Act means the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4852d.

Agent means any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing. This term does not apply to purchasers or any purchaser's representative who receives all compensation from the purchaser.

Available means in the possession of or reasonably obtainable by the seller or lessor at the time of the disclosure.

Common area means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

Contract for the purchase and sale of residential real property means any contract or agreement in which one party agrees to purchase an interest in real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

EPA means the Environmental Protection Agency.

Evaluation means a risk assessment and/or inspection.

Foreclosure means any of the various methods, statutory or otherwise, known in different jurisdictions, of enforcing payment of a debt, by the taking and selling of real property.

Housing for the elderly means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.

HUD means the U.S. Department of Housing and Urban Development.

Inspection means:

- (1) A surface-by-surface investigation to determine the presence of lead-based paint as provided in section 302(c) of the Lead-Based Paint Poisoning and Prevention Act [42 U.S.C. 4822], and
- (2) The provision of a report explaining the results of the investigation.

Lead-based paint means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

Lead-based paint free housing means target housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.

Lessee means any entity that enters into an agreement to lease, rent, or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Lessor means any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Owner means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

Purchaser means an entity that enters into an agreement to purchase an interest in target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

Reduction means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

Residential dwelling means:

- (1) A single-family dwelling, including attached structures such as porches and stoops; or

(2) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

Risk assessment means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including:

- (1) Information gathering regarding the age and history of the housing and occupancy by children under age 6;
- (2) Visual inspection;
- (3) Limited wipe sampling or other environmental sampling techniques;
- (4) Other activity as may be appropriate; and
- (5) Provision of a report explaining the results of the investigation.

Secretary means the Secretary of Housing and Urban Development.

Seller means any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations. The term "seller" also includes:

- (1) An entity that transfers shares in a cooperatively owned project, in return for consideration; and
- (2) An entity that transfers its interest in a leasehold, in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement, in return for consideration.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

TSCA means the Toxic Substances Control Act, 15 U.S.C. 2601.

0-bedroom dwelling means any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

Exhibit C

Previous Contract Claim and Change Order Settlement



STATE OF ALASKA
DEPARTMENT OF ADMINISTRATION
DIVISION OF FACILITIES

CHANGE ORDER

Contract No.: 2011-0222-9843 Project No. MN-004 Change Order No. 9

Project Name & Location: Governor's House Exterior Improvements Project, Juneau, AK

Contractor: Alaska Commercial Contractors, Inc.

SUMMARY OF CONTRACT AMOUNTS:

Address: P.O. Box 32878

Original Contract Amount: \$1,489,490.04

Juneau, AK 99803

Amount of Previous Changes: \$812,628.67

Estimate of this Change: \$100,880.46

Adjusted Contract Amount: \$2,202,999.17

The following change(s) in the above Contract are hereby made in accordance with the terms of the Contract and under the terms and conditions stated below. Price adjustments resulting from inaccurate cost and pricing data are subject to the provisions of AS 38.30.400(e). This document shall become an amendment to the Contract and all provisions of the Contract will be applicable.

Recommended By: [Signature] Title: Michael J. Szewc, Contracting Officer Date: 1/14/13

Approved By: [Signature] Title: Tanci Miniz, Leasing and Facilities Manager Date: 1-14-13

Acknowledged By: Indicates receipt of the order to perform the described work, but not the mutual agreement of the basis of payment and/or time allowance.

This change order constitutes a full and final settlement for all costs (including, but not limited to, all direct, indirect, delay impact, and ripple effect costs of labor, subcontractors, materials, and equipment) as well as all taxes, insurance, bonds, and profits) and time which are in any way associated with or resulting from the changes described below.

Accepted By: [Signature] Contractor's Representative Date: 1/14/13

Permission to add or replace subcontractor(s) to perform all or portions of the work described below: Yes No N/A

The time provided for completion of the contract is unchanged increased decreased per description below.

DESCRIPTION OF CHANGE (Use Continuation Sheet 25D-065 as Required)

- Exterior Paint Change - \$100,880.90
- This change order satisfies in full the claims made for compensation by the contractor in its December 14, 2011 Compensation Request
- The contractor agrees that upon execution of this change order, the claim created by its December 14, 2011 Compensation Request is withdrawn. Both parties agree that no action other than execution of this change order is required in order to trigger withdrawal of the contractor's claim created by its December 14, 2011 Compensation Request
- The attached Exhibit A spreadsheet shows the cost allocations for the mutually agreed upon settlement of the claim.

All other terms and conditions remain the same.

Funding source: NPBE CIP 13 AS 37804-17 CC 025/S103 LC 03427113

**2011-0222-9843
CHANGE ORDER NO. 9
EXHIBIT A**

DESCRIPTION	QTY	UNITS	RATE	TOTAL COSTS	CONTRACTOR PORTION	STATE PORTION
<u>VANPOOL SOUTH AND EAST</u>						
<u>STRIP AND REPAINT</u>						
STRAIGHT TIME LABOR	751	MH	\$85.00	\$63,835.00	\$31,917.50	\$31,917.50
OVERTIME LABOR	79	MH	\$105.00	\$8,295.00	\$4,147.50	\$4,147.50
ADDITIONAL STRIPPER	1	QUOTE	\$7,984.81	\$7,984.81	\$0.00	\$7,984.81
MASKING/CONTAINMENT	1	LS	\$169.95	\$169.95	\$0.00	\$169.95
FINISH PAINT AND SUPPLIES	1	LS	\$1,004.36	\$1,004.36	\$0.00	\$1,004.36
DISPOSAL FEES	1	LS	\$82.80	\$82.80	\$0.00	\$82.80
ADDITIONAL PRIMER COAT	1	LS	\$11,360.00	\$11,360.00	\$0.00	\$11,360.00
<u>VANPOOL PAINTING</u>						
<u>SAND BLASTING</u>						
STRAIGHT TIME LABOR	291.50	MH	\$85.00	\$24,777.50	\$12,388.75	\$12,388.75
OVERTIME LABOR	24.50	MH	\$105.00	\$2,572.50	\$1,286.25	\$1,286.25
COMPRESSOR RENT	1	LS	\$1,158.15	\$1,158.15	\$0.00	\$1,158.15
FUEL	1	LS	\$254.66	\$254.66	\$0.00	\$254.66
MASKING/CONTAINMENT	1	LS	\$478.73	\$478.73	\$0.00	\$478.73
SAND	1	LS	\$2,870.00	\$2,870.00	\$0.00	\$2,870.00
<u>ACC</u>						
ADDITIONAL SCAFFOLD/TENT	192	MH	\$81.40	\$15,628.80	\$7,814.40	\$7,814.40
HEATING/DEHUMID EQUIP	1	INVOICE	\$6,600.99	\$6,600.99	\$0.00	\$6,600.99
TENT/HEAT SUPPLIES	1	LS	\$619.34	\$619.34	\$0.00	\$619.34
FUEL FOR HEATERS	1	INVOICE	\$6,179.87	\$6,179.87	\$0.00	\$6,179.87
LABOR TO FILL HEATERS	72	ST MH	\$81.40	\$5,860.80	\$2,930.40	\$2,930.40
OT LABOR FILL HEATERS	32	OT MH	\$102.00	\$3,264.00	\$1,632.00	\$1,632.00
SUBTOTAL				\$162,997.26	\$62,116.80	\$100,880.46
O/H & PROFIT			0.0%	\$0.00	\$0.00	\$0.00
SUBTOTAL				\$162,997.26	\$62,116.80	\$100,880.46
BOND			0.0%	\$0.00	\$0.00	\$0.00
SUBTOTAL				\$162,997.26	\$62,116.80	\$100,880.46
TOTAL				\$162,997.26	\$62,116.80	\$100,880.46