



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

**THIS OPINION WAS INITIALLY ISSUED UNDER PROTECTIVE ORDER AND
IS BEING PUBLICLY RELEASED IN ITS ENTIRETY ON APRIL 16, 2024**

DENIED: March 21, 2024

CBCA 7508

FRAMACO INTERNATIONAL, INC.,

Appellant,

v.

DEPARTMENT OF STATE,

Respondent.

Douglas L. Patin and Erik M. Coon of Bradley Arant Boult Cummings LLP, Washington, DC; and Sam Z. Gdanski and Abraham S. Gdanski of Gdanski Law PC, Teaneck, NJ, counsel for Appellant.

Thomas D. Dinackus, Matthew S. Tilghman, and Alexandra N. Wilson, Office of the Legal Adviser, Buildings and Acquisitions, Department of State, Washington, DC, counsel for Respondent.

Before Board Judges **BEARDSLEY** (Chair), **RUSSELL**, and **O'ROURKE**.

RUSSELL, Board Judge.

Appellant, Framaco International, Inc. (Framaco), has filed 129 appeals with the Board (certain of which are consolidated) based on its contract with respondent, Department of State (State or agency), Bureau of Overseas Building Operations (OBO), to construct an embassy compound in Port Moresby, Papua New Guinea.

This decision is being issued in accordance with the Board’s Order on Further Proceedings of October 23, 2023, largely adopting the parties’ proposal on resolving 108 of appellant’s non-consolidated appeals brought pursuant to Board Rule 53. *See* 48 CFR 6101.53 (governing accelerated procedures, which are available at an appellant’s election and are limited to appeals in which there is a monetary amount in dispute of \$100,000 or less); *see also* 48 CFR 6101.1 (“The Board may alter [its] procedures on its own initiative or on request of a party to promote the just, informal, expeditious, and inexpensive resolution of a case.”). The Order states that “[t]he presiding judge with the two members of the panel . . . will decide the following appeals for which the parties will submit briefing: CBCA 7508, 7512, 7513, 7549, 7561, 7572, 7573, 7625, 7695, 7712, 7847, and 7859 (‘Selected Appeals’).” The Order additionally states, “Decisions rendered by the panel will be in summary form either in writing or orally, if a hearing is held; will be final and conclusive; will not be set aside, except for fraud; and will not be precedential.” As agreed to by the parties, quantum in the non-consolidated appeals to which the Board’s Order applies will be decided based on a formula using the damages amounts on which appellant prevails in the Selected Appeals. In a subsequent joint response docketed with the Board on March 19, 2024, the parties confirmed their agreement to abide by the Board’s Order on Further Proceedings of October 23, 2023, as it relates to 108 non-consolidated appeals brought by appellant.

This appeal (CBCA 7508) results from State’s final denial of Framaco’s claim that requested \$80,044 for work that consisted of removing receptacle faceplates that were labeled with adhesive stickers and replacing them with faceplates that were engraved. First, Framaco contends that its interpretation that the contract permitted the use of adhesive labels on receptacle nameplates was reasonable and supported by the respondent’s actions. Second, in the alternative, Framaco claims that the replacement of the receptacle faceplates constituted unnecessary economic waste. State, conversely, contends that the specifications were clear in requiring engraved labels and the adhesive labels were not adequate for the purpose of the contract. We deny the appeal.

Background

A. The Contract

In July 2015, State awarded Framaco a firm-fixed-price contract, initially valued at \$96,875,381, to construct the New Embassy Compound (NEC) in Port Moresby, Papua New Guinea. Appeal File, Exhibit 1 at DOS-PTMO-00982321.¹

¹ All exhibits are found in the appeal file of CBCA 7508, unless otherwise noted.

The project was originally designed in 2010 as a “Standard Secure mini-Compound” (SSmC) with a scope that included a lock-and-leave new office building, a perimeter security wall and fence, a main compound entry pavilion (MCAP), and a service entry/utility building and support annex. Exhibit 2 at DOS-PTMO-00982414. Construction began in 2012, but due to Fort Moseby’s future marine detachment plans, the embassy staff requirement was increased in 2013. *Id.* As a result, State closed out the 2012 contract. The project was redesigned and expanded, incorporating portions of the SSmC, the perimeter security wall and fence, the MCAP, a new service compound entry pavilion, a new four-story office building, a marine service guard residence, a service entry/utility building, an enlarged support annex, and a new recreation facility. *Id.* State’s design standards for OBO projects provide that the design service life, or durability, of these structures should be 100 years. Exhibit 92 at DOS-PTMO-01345996.

The new NEC contract instructed Framaco to place “equipment identification labels” on each unit of equipment. Exhibit 5 at DOS-PTMO-01402842. The contract contains multiple provisions regarding the labeling process. *See generally* Exhibits 5-7. Pertinent to this case are the sections that pertain to the specifications for switch and receptacle wall plate labels.²

Section 260553 of the NEC contract, titled “IDENTIFICATION FOR ELECTRICAL SYSTEMS,” contains the following provisions,

2.6 EQUIPMENT IDENTIFICATION LABELS

- A. Engraved, Laminated Acrylic or Melamine Label: Punched or drilled for screw mounting. White letters on a dark-grey background. Minimum letter height shall be 10 mm (3/8 inch).

....

PART 3 – EXECUTION

....

² The appellant briefly mentions contract section 270553, “IDENTIFICATION FOR COMMUNICATION SYSTEMS,” in its briefs and its request for a contracting officer’s final decision. We do not consider that section because we do not find it pertinent to this appeal.

3.1.M. Equipment Identification Labels: On each unit of equipment, install unique designation label that is consistent with wiring diagrams, schedules, and Operation and Maintenance Manual. . . .

1. Labeling Instructions:
 - a. Indoor Equipment: Engraved, laminated acrylic or melamine label. Unless otherwise indicated, provide single line of text with 13 mm (1/2) inch high letters on 38 mm (1-1/2 inch) high label; where 2 lines of text are required, use labels 50 mm (2 inches) high.
 - b. Outdoor Equipment: Engraved, laminated acrylic or melamine label.
 -
2. Equipment to be Labeled:
 - a. Panelboards, electrical cabinets, and enclosures.
 - b. Access doors and panels for concealed electrical items.
 - c. Electrical switchgear and switchboards.
 - d. Transformers and automatic voltage regulators.
 - e. Electrical substations.
 - f. Emergency system boxes and enclosures.
 - g. Motor-control centers.
 - h. Disconnect switches.
 - i. Enclosed circuit breakers.
 - j. Motor starters.
 - k. Push-button stations.
 - l. Power transfer equipment.
 - m. Contactors.
 - n. Remote-controlled switches, dimmer modules, and control devices.
 - o. Battery racks.
 - p. Power-generating units.
 - q. Voice and data cable terminal equipment.
 - r. Master clock and program equipment.
 - s. Intercommunication and call system master and staff stations.
 - t. Television/audio components, racks, and controls.
 - u. Fire-alarm control panel and annunciators.

- v. Security and intrusion-detection control stations, control panels, terminal cabinets, and racks,
- w. Monitoring and control equipment.
- x. Uninterruptible power supply (UPS) equipment.
- y. Terminals, racks, and patch panels for voice and data communication and for signal and control functions.

Exhibit 5 at DOS-PTMO-01402837-43.

Contract section 262726, “WIRING DEVICES,” includes specifications for single and duplex receptacles, single- and double-pole snap switches and dimmer switches, and device wall plates. Exhibit 6 at DOS-PTMO-01402959. Section 262726 references the above-mentioned section 260553 by requiring that Framaco “[c]omply with Division 26 Section ‘Identification for Electrical Systems.’” *Id.* at DOS-PTMO-01402963. Immediately after, section 262726 lays out the specific labeling requirements for receptacles and switch plates. The section, in relevant part, provided:

1. Receptacles: Identify panelboard and circuit number from which served. Use *hot, stamped or engraved machine printing* with black-filled lettering on face of plate, and durable wire markers or tags inside outlet boxes.
2. Switches: Where three or more switches are ganged, and elsewhere as indicated, *identify each switch with approved legend engraved on wall plate.*

Id. (emphasis added).

B. The Parties’ Disputes

On October 30, 2017, Framaco sent the agency submittal #260553-01-0 for approval. Exhibit 8 at DOS-PTMO-02913932. Submittal #260553-01-0 contained information pertaining to products Framaco planned to use to identify the various parts of the building’s electrical systems. *Id.* The submittal included information about five products, including “Label Printer Systems and Machine Printed Self-Adhesive Vinyl Type Tapes and Markers for Indoor & Outdoor Applications.” *Id.* Of note, Framaco represented that it would be using a Brady-brand label maker to label electrical equipment described in section 260553. *Id.* at DOS-PTMO-02913934. The Brady label maker prints the desired phrase or words on an “Indoor/Outdoor Vinyl” adhesive material. *Id.* at DOS-PTMO-02913936. On

November 15, 2017, State approved submittal #260553-01-0. Exhibit 9 at DOS-PTMO-02313959. This submittal did not contain a reference to section 262726. *See id.*

On May 14, 2018, Framaco submitted for approval submittal #262726-05-1, which included a “Sample Plate Marking” for receptacle wall plates. Exhibit 13. This submittal referenced the contract requirements listed in section 262726. *Id.* In a photo provided by State, the sample that Framaco supplied was a silver wall plate with two versions of the lettering “RP-XXX CKT 10” placed on it. Exhibit 41 at DOS-PTMO-02168264. One version of the lettering is attached via a sticker label and the other appears to be engraved onto the plate, but the method by which it was placed is not identified.³ *See id.* On July 19, 2018, State rejected this submittal. *Id.* at DOS-PTMO-02168261. The Government, in its rejection, left a note for Framaco stating, “[f]or receptacles, provide sample(s) clearly identifying the hot stamped method or engraved machine printing method.” *Id.* According to the parties’ briefs and exhibits, Framaco did not send to the agency any other submittals referencing section 262726. Respondent’s Initial Brief at 3-4; *see generally* Appellant’s Opening Brief.

Later, on January 14, 2019, Framaco proffered submittal #260553-02-0 for State’s approval. Exhibit 14 at DOS-PTMO-03099504. Like submittal #260533-01-0, submittal #260553-02-0 was titled “Samples for Identification For Electrical Systems” and cited section 260553 as the corresponding contract specification. *Id.* Framaco attached a sample of a receptacle faceplate labeling to the submittal. *Id.* at DOS-PTMO-03099514. The attachment provided that “[a]ll switch and receptacle faceplates will be labeled by using below described label printer and cartridge” and listed the Brady label maker and its vinyl labels as the chosen method to complete the contract requirements. *Id.* On January 30, 2019, State notified Framaco that submittal #260553-02-0 was “Accepted as Submitted.” Exhibit 16 at DOS-PTMO-01123708. A similar submittal was approved in submittal #260553-03-0. *See* Exhibit 18; *see also* Exhibit 19.

Shortly after, Framaco began the installation of receptacle faceplates and identified each plate using the Brady vinyl adhesive labels. On October 9, 2020, in a quality control meeting (QCM), State notified Framaco that the receptacles were non-compliant and that the plates needed to be “engraved or hot stamped” and “not . . . label[ed].” Exhibit 20 at FRAM-0265856. Framaco and State subsequently exchanged several emails regarding the faceplates. *See* Exhibits 21-25. Framaco insisted that the adhesive labels were compliant under contract section 260553, while State pointed to the specifications in section 262726.

³ The parties do not provide any additional information about submittal #262726-05-1 in their briefs.

Exhibit 21 at DOS-PTMO-02406643-44. During these initial discussions, State's project manager asked for input from two of the agency's on-site engineers. Exhibit 23 at DOS-PTMO-01907660-61. The engineers stated that State has used both types of labels on previous projects. *Id.* at DOS-PTMO-01907660. Nevertheless, the agency decided that it would require engraved labels on receptacle nameplates, and Framaco began the replacement process.

Framaco, by letter dated June 8, 2021, notified State that it considers the replacement of the labels on the nameplates "additional work" under the contract and that it "will request reimbursement for both time and cost impacts caused by [the work]." Exhibit 26 at DOS-PTMO-02772352-53. State's contracting officer responded, disagreeing with the assertions in Framaco's letter and stating that its directions to Framaco were "based on a fair and equitable review of contract requirements." Exhibit 28 at DOS-PTMO-02400742. The parties exchanged more letters, each reiterating the same points as mentioned above. *See* Exhibits 30, 32, 34.

C. Framaco's Appeal

On July 2, 2022, Framaco submitted a request for a contracting officer's final decision that sought to recover \$80,044 of "direct costs incurred by Framaco as a result of the Government's directive to replace the already-installed electrical faceplates with engraved faceplates." Exhibit 35 at DOS-PTMO-03089025. Framaco claimed that the additional costs were caused by "OBO's incorrect interpretation of the controlling specification." *Id.* at DOS-PTMO-03089035. State's contracting officer disagreed with what Framaco considered the controlling specification and denied the claim on August 30, 2022. Exhibit 36. On September 9, 2022, Framaco filed this appeal.

Discussion

Contract Interpretation Claim

In its appeal, Framaco asserts that it is entitled to \$80,044 for additional expenses incurred for removing receptacles with the Brady-brand adhesive labels and replacing them with receptacles with engraved faceplates. The appellant contends that its interpretation of the contract was reasonable because the use of the adhesive labels was consistent with the specifications listed in contract section 260533. *See* Exhibit 5. State argues that the contract contained no ambiguity because section 262726 provided that receptacle nameplates should be identified using a "hot, stamped or engraved machine printing" method. *See* Exhibit 6. The parties' disagreement primarily concerns which specification is controlling with regard to identifying receptacles and switch plates.

Our examination starts with the plain language of the contract. The Court of Appeals for the Federal Circuit has made clear that “the paramount means of interpreting a contract will be to look for the ‘plain meaning’ of the contract’s language.” John Cibinic, Jr., James F. Nagle & Ralph C. Nash, Jr., *Administration of Government Contracts* 164 (5th ed. 2016) (citing *Coast Federal Bank v. United States*, 323 F.3d 1035, 1040 (Fed. Cir. 2003)). Contract language should “be given the plain meaning that would be derived by a reasonably intelligent person acquainted with the contemporaneous circumstances.” *Columbia Construction Co. v. General Services Administration*, CBCA 3258, 15-1 BCA ¶ 35,856, at 175,319 (citing *Firestone Tire & Rubber Co. v. United States*, 444 F.2d 547, 551 (Ct. Cl. 1971)); see *Wu & Associates, Inc. v. General Services Administration*, CBCA 6760, 21-1 BCA ¶ 37,965, at 184,383. “If the plain language of the contract is unambiguous on its face, the inquiry ends, and the contract’s plain language controls.” *Columbia Construction Co.*, 15-1 BCA at 175,319 (citing *Hunt Construction Group v. United States*, 281 F.3d 1369, 1373 (Fed. Cir. 2002)). The fact that the parties differ on the interpretation of a contractual provision or provisions does not necessarily mean that it is ambiguous. *Id.* (citing *Tri-Cor, Inc. v. United States*, 458 F.2d 112, 126 (Ct. Cl. 1972) (per curiam)).

Here, a review of the contract’s plain language, in section 262726, reveals that receptacle nameplates were to be identified with “hot, stamped or engraved machine printing with black-filled lettering on [the] face of [the] plate.” Exhibit 6 at DOS-PTMO-04102963. There is nothing ambiguous about this provision. Section 260533 contains broad instructions on how to label electric equipment; however, it also includes a list of twenty-five types of equipment to which the section’s specifications apply. Exhibit 5 at DOS-PTMO-01402842. Receptacle nameplates are not among the types of equipment that are listed. *Id.* Accordingly, we see no discernible reason why these provisions should be interpreted as conflicting with one another.

Additionally, if we determined that section 260533 controls the method of identification for receptacles, it would render section 262726, paragraph 3.3.A.1, meaningless. See Exhibit 6 at DOS-PTMO-04102963. Such a reading would be contrary to the basic rules of contract interpretation. See *Wu & Associates*, 21-1 BCA at 184,383; see also *Arizona v. United States*, 575 F.2d 855, 863 (Ct. Cl. 1978) (“[A]n interpretation which gives a reasonable meaning to all parts [of a contract] will be preferred to one which leaves a portion of it useless, inexplicable, inoperative, void, insignificant, meaningless, superfluous, or achieves a weird and whimsical result.”).

Because the Board finds that the contract’s provisions are clear, we “may not resort to extrinsic evidence to interpret them.” *McAbee Construction, Inc. v. United States*, 97 F.3d 1431, 1435 (Fed. Cir. 1996). As such, Framaco’s arguments concerning the agency’s actions surrounding the installation of the receptacles will not be considered, as “outside evidence

may not be brought in to create an ambiguity where the language is clear.” *City of Tacoma v. United States*, 31 F.3d 1130, 1134 (Fed. Cir. 1994). Consequently, we find that Framaco was required to label receptacle nameplates with a “hot, stamped or engraved machine printing” method and that its conclusion that adhesive labels would be sufficient was not a reasonable interpretation of the contract. See Exhibit 6 at DOS-PTMO-04102963.

Furthermore, the agency’s approval of submittal #260553-02-0 did not constitute a change to the specifications. See *R.C. Professional Services, Inc. v. Department of Homeland Security*, CBCA 775, 09-2 BCA ¶ 34,308, at 169,472 (“The Government’s approval of submittals and shop drawings . . . do[es] not constitute the Government’s acceptance of non-compliant work or serve to diminish the contractor’s obligation to complete performance under the terms of the contract.”). When Framaco installed non-compliant items, “it was not entitled to a change order and additional money and time to provide compliant products.” *Id.*

Economic Waste Claim

Next, Framaco contends that replacing the Brady-brand labeled faceplates with engraved faceplates caused unnecessary economic waste. Generally, the Government “has the right to insist on performance in strict compliance with the contract specifications and may require a contractor to correct nonconforming work.” *Granite Construction Co. v. United States*, 962 F.2d 998, 1006-07 (Fed. Cir. 1992). However, in certain circumstances, the Government “should not be permitted to direct the replacement of work in situations where the cost of correction is economically wasteful and the work is otherwise adequate for its intended purpose.” *Id.* at 1007 (holding that the contractor was entitled to an adjustment under the doctrine of economic waste because while the nonconforming waterstop was not in strict compliance with the contract, it was still entirely adequate for the project). This concept of economic waste has been applied by courts “when the repair or replacement is economically wasteful and the government receives work that substantially complies with the specifications.” John Cibinic, Jr., James F. Nagle & Ralph C. Nash, Jr., *supra*, at 739.

Here, the receptacles labeled with adhesives have already been replaced with engraved faceplates. Framaco argues that it is entitled to an adjustment because the replacement was a “significant waste of resources.” Appellant’s Reply at 7. The appellant relies on *Granite Construction*, 962 F.2d at 1006-07, maintaining that it is entitled to an adjustment because the adhesive labels were adequate for the project and the replacement was unnecessary. In *Granite Construction*, the contractor enlisted an expert to analyze the qualities of the nonconforming waterstop with the site conditions. *Id.* at 1006. This expert testified that the material used in the nonconforming waterstop exceeded the required performance standard for the site. *Id.* Here, Framaco contends that the email responses from the on-site

government engineers expressing that State has used both types of labels in the past establish that the adhesive labels would have been just as effective as the engraved labels. We read these emails differently.

State's project director emailed two on-site engineers asking, from their experience working on projects for OBO, if faceplates were usually engraved or labeled with adhesive vinyl. Exhibit 23 at DOS-PTMO-01907661. Both engineers responded, indicating that they have "seen both types of labels on OBO projects" and "have accepted both methods for receptacle circuits." *Id.* at DOS-PTMO-01907660. While these emails showcase that adhesive labels have been accepted by the agency in the past, the statements do not concern the effectiveness of the labels or the quality of adhesive labels as compared to engraved labels. A similar situation occurred in *Fire Security Systems, Inc. v. General Services Administration*, GSBCA 12120, et al., 97-2 BCA ¶ 28,994, at 144,405 (finding that it was not economically wasteful for the Government to insist that the contractor replace class B wiring with class A wiring as required under the contract because the contractor did not prove that class B wiring provided the requisite degree of reliability as called for in the contract specification). There, the appellant's expert testified about the reliability of both types of wiring, explaining that both are widely used and could be described as reliable. *Id.* However, because the expert testified that the class A wiring *could* be more reliable during a fire, the Government's "preference for such a system, would, therefore, not be unreasonable." *Id.* Similarly, here, while adhesive labels have been accepted by the agency in past projects, Framaco did not submit any proof that the adhesive labels will have a similar longevity or durability as the engraved labels. Contrary to Framaco's assertion, State has given multiple reasons why it insists on the engraved labels instead of the adhesive labels, including that adhesive labels are more likely to "wear out"; that engraved labels are "tamper proof"; and that it is difficult to sanitize or clean adhesive labels without causing damage. Exhibit 93 at DOS-PTMO-03551621. Because the structures being built under the NEC contract have a service life of around 100 years, we find that the Government's preference for engraved labels was not unreasonable and did not constitute economic waste.

Additionally, courts have been hesitant to award contractors damages based on the economic waste doctrine when the willful or intentional nature of the contractor's action caused the defective work. *Yates-Desbuild Joint Venture v. Department of State*, CBCA 3350, et al., 17-1 BCA ¶ 36,870, at 179,720 (citing *H.L.C. & Associates Construction Co. v. United States*, 367 F.2d 586, 600 (Ct. Cl. 1966)). Here, although there is no evidence that Framaco acted intentionally not to conform with the contract's specifications, there are indications that it was on notice that the adhesive labels did not conform with the specifications listed in the contract. Framaco initially submitted the Brady-type labels for approval under section 262726 and indicated that it planned to use the adhesive labels for receptacle nameplates. Exhibit 13. The Government rejected this submittal. Exhibit 41 at

DOS-PTMO-02168261. Framaco did not resubmit anything under section 262726, but it included receptacle nameplates in a subsequent submittal under section 2602553. Exhibit 14 at DOS-PTMO-03099504. These facts indicate that Framaco was on notice that the adhesive labels were not the correct method of identification for receptacle wall plates.

Accordingly, after reviewing the evidence in the record, we find that replacement of the adhesive-labeled faceplates with the engraved faceplates did not cause unnecessary economic waste.

Decision

The appeal is **DENIED**.

Beverly M. Russell

BEVERLY M. RUSSELL

Board Judge

We concur:

Erica S. Beardsley

ERICA S. BEARDSLEY

Board Judge

Kathleen J. O'Rourke

KATHLEEN J. O'ROURKE

Board Judge