



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 29, 2024**

DENIED: April 18, 2024

CBCA 7512

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 under the Board's order on further proceedings of October 19, 2023 (Order), largely adopting the parties' proposal to resolve approximately 100 of appellant's non-consolidated appeals brought pursuant to Board Rule 53 (48 CFR 6101.53 (2023)) and certain claims in four of its consolidated appeals not based on Government-caused delay. *See* Rule 53 (governing accelerated procedures available at an appellant's election, though limited to appeals involving disputes of \$100,000 or less); *see also* Rule 1(a) ("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 and certain claims in four of Framaco's consolidated appeals (to which the Order applies) will be decided based on a formula using Framaco's prevailing damages in the Selected Appeals. In a subsequent joint response docketed with the Board on March 19, 2024, the parties confirmed their agreement that the Order applies to the appeals described above.

This appeal (CBCA 7512) arises from State's final decision denying Framaco's claim for increased costs incurred for the installation of guard railings. We find that the contract required Framaco to design and install these railings. The appeal is therefore denied.

Background

I. The Project

State awarded the embassy construction project to Framaco on July 6, 2015. 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), a service entry/utility building, and a support annex. Appeal File, Exhibit 2 at DOS-PTMO-00982414.¹ Construction of the facility began in 2012, but in 2013, after forty percent of the project was completed, a future marine detachment was planned for Port Moresby, and the embassy staffing requirement was increased. *Id.* State then descope the work under the 2012 contract and closed out that

¹ All exhibits are found in the appeal file of CBCA 7512, unless otherwise noted.

contract. The project was redesigned under an expanded New Embassy Compound (NEC), incorporating the completed portions of the SSmC project as well as surplus equipment and materials, as appropriate. *Id.* The redesigned project included 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 (SVC), an enlarged support annex (SPX), and a new recreation facility. *Id.*

II. Relevant Contract Provisions

The contract's statement of work (SOW) provides that the project must be constructed in accordance with construction documents, which include drawings and specifications. Exhibit 2 at DOS-PTMO-00982415. The drawing identified as SVC M122, titled "Mechanical Roof Plan," required Framaco to "provide hand railing for all equipment 3.1 [meters (m)] or less from roof edge." Exhibit 65 at DOS-PTMO-00992360 n.6. The specification on pipe and tube railings (identified as "Section 055213") included provisions on contractor submittals and performance requirements, both having language requiring Framaco to "[e]ngage a qualified engineer, to design railings, including attachment to building construction." Exhibit 5 at DOS-PTMO-00984746–47. The structural performance requirements for "Hand Rails" and "Top Rails of Guards" in Section 055213 are the same, i.e., as installed, both are required to be able to withstand the effects of similar gravity loads and stresses. *Id.* at DOS-PTMO-00984747.

The contract's SOW also provides that the "SVC . . . [has] been designed and shall be constructed according to the 2012 Building Code of the Overseas Buildings Operations, (2006 International Building Code (IBC), amended by the 2012 OBO International Codes Supplement (OBO-ICS))." Exhibit 2 at DOS-PTMO-00982417. Section 1013.5 of the 2006 IBC states:

1013.5 Mechanical Equipment. Guards shall be provided where appliances, equipment, fans, roof hatch openings or other components that require service are located within 10 feet (3048 [millimeters (mm)]) of a roof edge

International Code Council, International Building Code, at 218 (11th ed. 2006), <https://codes.iccsafe.org/content/IBC2006/chapter-10-means-of-egress>.

III. Facts Related to Issue in Dispute

The bid drawings were made available to offerors on June 10, 2015. According to Framaco, on March 10, 2021, OBO's Fire Representative verbally alerted Framaco that guardrails were required on the SVC roof within three meters of mechanical equipment,

including the photovoltaic panels that workers would regularly need to access for routine maintenance. Exhibit 29 at DOS-PTMO-03089178. On July 18, 2021, OBO followed up on this requirement by sending an annotated version of the mechanical drawings to Framaco and requesting that Framaco provide the delegated-design submittal required by Section 055213. Exhibits 10-11. On August 16, 2021, Framaco responded by emailing a letter identified as “145-231-1” to the contracting officer (CO). Exhibits 12-13. In the letter, Framaco asserted:

Please note that the Government-provided IFC Design Drawings; SVC-A121 (Roof Plan), SVC A221 (Elevations and Sections), and SVC-A522 (Roofing Details) include very detailed design information about the work required on the SVC roof. An additional guardrail on [the] SVC roof, which was required by OBO-Fire during the site visit, is not included in the IFC Design, and therefore it is reasonably understood not to be required/prescribed by the Architect of Record, and accordingly not part of the Framaco scope under this Design-Bid-Build Contract. In contrast, Framaco points out that when guardrails were required by the Architect of Record at the SPX Building roof (around the roof access hatch), they were included in the architectural design drawings, and were provided and installed by Framaco in accordance with the Design Documents. Likewise the drawings for the [Marine Service Guard Residence (MSGR)] building (which also has photovoltaic panels) show guard rails all around, which Framaco provided. Therefore, Framaco disagrees with [OBO’s] interpretation of the Contract requirements on this matter and asserts that Framaco has no design responsibility.

Exhibit 13 at DOS-PTMO-03097840.

In the letter, Framaco additionally asserted that OBO’s reference to the mechanical drawing was irrelevant because “[g]uardrails or handrails on the building roofs are architectural components and are life safety provisions that need to be indicated on the roof plans, roof sections, building elevations and on the architectural drawings, and clearly prescribed by the Architect of Record.” *Id.* Framaco concluded that, “[w]hen the Architect or Engineer of Record omits such components of the Design, Framaco refuses to be held responsible for such design omission.” *Id.*

The CO replied on August 17, 2021, rejecting appellant’s position and finding that the contract as written requires these railings. Exhibit 14. The CO disputed Framaco’s assertion that it had no design responsibility under the contract, citing to Section 055213, Pipe and Tube Railings, which at 055213-1.3-E states, “Delegated-Design Submittal: For railings, [include] analysis data signed and sealed by the qualified professional engineer responsible

for their preparation,” and at 055213-2.2-A states, “Delegated-Design: Engage a qualified professional engineer, to design railings, including attachment to building construction.” *Id.* at DOS-PTMO-02363818. The CO stated, “The fact that the railing is required by the mechanical drawings but not specifically shown on the architectural drawings does not relieve Framaco from its contractual responsibility to provide the railing.” *Id.*

On July 14, 2022, Framaco submitted Claim 55, asserting that the designs for the SVC omitted guardrails, seeking payment of \$70,160 in direct costs, and requesting a final CO decision. Exhibit 29 at DOS-PTMO-03089175. In issuing her decision denying Framaco’s claim on September 12, 2022, the CO maintained State’s position that the contract required railings on the SVC’s roof. Exhibit 30 at DOS-PTMO-03100169-70, DOS-PTMO-03100173. This appeal followed.

In its briefing in this appeal, Framaco requests a ruling that State is liable for Framaco’s increased cost to design, furnish, and install the guardrails. Framaco asserts that “[u]nlike the SPX and MSGR *architectural* drawings, the SVC *architectural* drawings did not include a single reference to or depiction of guardrails,” Appellant’s Opening Brief at 9, despite the SVC drawings being sixty-two pages in length. *Id.* at 3. Framaco acknowledges “a single note on *mechanical* drawing M122,” which states, “Provide **hand railings** for all equipment 3.1[m] or less from the roof edge.” *Id.* However, quoting 29 CFR 1910.21, Framaco asserts that there is a material difference between a “guardrail” and a “handrail,” with the former described as a “barrier erected along an unprotected or exposed” edge and the latter used to provide “a handhold for support.” *Id.* at 7. Framaco also notes that, on December 30, 2021, it transmitted its SVC roof guardrail submittal based on the sketch of the contracting officer’s representative (COR), but, thereafter, OBO increased the length of the guardrail by approximately 12.5 meters from the length in the COR’s sketch. *Id.*

Framaco also argues that the SVC roof’s architectural drawings are design specifications, making the absence of railings on the architectural drawings a design omission. Appellant’s Opening Brief at 8. Framaco argues that it reasonably interpreted the absence of railings in the architectural drawings to mean that none were required. *Id.* at 8-9; Appellant’s Reply Brief at 2-4. In the alternative, Framaco argues that the requirement to provide “hand railing” contained in the mechanical drawings was too “buried” to create a duty to inquire and thus presents a latent ambiguity that must be interpreted against State. Appellant’s Reply Brief at 5.

State argues that Framaco was required to comply with all requirements of the contract, including the SVC M122 mechanical drawing, Respondent’s Reply Brief at 1, and that “Framaco’s position, that because the *architectural* drawings [for the SVC] did not include guardrails, Framaco was not required to comply with *mechanical* drawings . . . falls

flat as a matter of logic.” *Id.* at 3. State asserts that the railing requirements for the MSGR and SPX discussed by Framaco are “completely irrelevant to the requirement for railings at the SVC,” noting that the MSGR and SPX were different buildings with different construction requirements. *Id.* at 2. State further explains that:

the Government did not require installation of guardrails on the roof of the SVC as was required on the MSGR and SPX architectural drawings, as Framaco attempts to imply The Government simply required railing for all equipment 3.1[m] or less from the roof edge as required by M122 and the International Building Code (“IBC”), *i.e.*, if there was no equipment on the roof, or equipment was more than 3.1[m] from the roof edge, no railings were required [And further, g]iven the requirement for railings was to provide fall protection related to accessing *mechanical equipment* installed near the SVC roof edge, it follows that the requirement would appear on the *mechanical* drawings, not the architectural drawings.

Id. at 4. State additionally asserts that the Occupational Safety and Health Administration’s regulation at 29 CFR 1910.21, defining “guardrail” and “handrail,” for stairs and mobile ladders was not incorporated into the contract and is, thus, immaterial. *Id.* at 5.

Discussion

“Contract language must be read in accordance with its express terms” and “given the plain meaning that a reasonably intelligent person, acquainted with the circumstances, would derive from that language.” *Wu & Associates, Inc. v. General Services Administration*, CBCA 6760, 21-1 BCA ¶ 37,965, at 184,383. “The contract must be read as a whole and in light of its purpose. Reasonable meaning must be given all parts of the [contract] so as not to render any portion meaningless, or to interpret any provision so as to create a conflict with other provisions of the contract.” *Columbia Construction Co. v. General Services Administration*, CBCA 3258, 15-1 BCA ¶ 35,856, at 175,319. “If the terms of a contract are clear and unambiguous, they must be given their plain meaning – extrinsic evidence is inadmissible to interpret them.” *Barron Bancshares, Inc. v. United States*, 366 F.3d 1360, 1375 (Fed. Cir. 2004).

Here, the plain language of SVC M122, titled “Mechanical Roof Plan,” unambiguously requires Framaco to “provide hand railing for all equipment 3.1[m] or less from roof edge.” Exhibit 65 at DOS-PTMO-00992360 n.6. These railings are not an option or suggested design: note 6 affirmatively requires Framaco to “provide hand railings.” *Id.* No “reasonably intelligent” contractor would overlook this requirement. *See Zinger Construction Co. v. United States*, 807 F.2d 979, 981 (Fed. Cir. 1986); *Wu & Associates, Inc.*, 21-1 BCA at 184,383. The 2006 IBC, incorporated by reference into the contract, also

requires guards where equipment requiring service are located within ten feet (3048 mm) of a roof edge. Further, notwithstanding Framaco's arguments to the contrary, the contract clearly included a requirement that Framaco engage a qualified professional engineer to design railings. Exhibit 5 at DOS-PTMO-00984746-47.

Framaco's arguments that it was not required to install the railing on the SVC roof are unpersuasive. First, Framaco's assertion that SVC M122, note 6, presents a latent ambiguity that should be read out of the contract because the note is "buried" on one page of a sixty-two-page document, which includes both architectural drawings and the mechanical drawing at issue here, lacks merit. Framaco relies on *CJW Contractors Inc.*, ASBCA 63228, 23-1 BCA ¶ 38,272, at 185,826, to support its position. Appellant's Reply Brief at 7. However, the facts of *CJW Contractors* are distinguishable. There, the specifications for a building's roof structure mentioned only W-beams and S-beams, and the Government argued that I-beams were required solely by pointing to a reference to I-beams contained in a diagram showing "typical pipe hanger supports." *CJW Contractors Inc.*, 23-1 at 185,826. Because that requirement was questionably mandatory, contained in an unexpected location, and not cross-referenced in a way that placed the contractor on notice of its existence, the board held that the I-beam requirement presented a latent ambiguity that did not trigger the contractor's duty to inquire. *Id.* Here, there is no justifiable reason for ignoring SVC M122, note 6, or the relevant IBC provision – both requirements of the contract.

Second, Framaco's argument that it was not required to install the guardrails because the architectural drawings – which Framaco characterizes as design specifications – did not require them is simply without support. Although perhaps not included in the architectural drawings, the requirement to install guardrails for "equipment 3.1[m] or less from roof edge" was included on the mechanical drawing for the SVC. Exhibit 65 at DOS-PTMO-00992360 n.6. Framaco cannot selectively remove a requirement from the contract by which it agreed to be bound. As the United States Court of Appeals for the Federal Circuit explained in *Zinger Construction Co.*:

On occasion the labels "design specification" and "performance specification" have been used to connote the degree to which the government has prescribed certain details of performance on which the contractor could rely However, those labels do not independently create, limit, or remove a contractor's obligations. Contracts are viewed in their entirety and given the meaning imputed to a "reasonably intelligent contractor" acquainted with the involved circumstances . . . regardless of whether labelled "design," "performance," or both.

Zinger Construction Co., 807 F.2d at 981 (citations omitted).

Finally, Framaco’s citation to an OSHA regulation discussing the difference between “handrail” and “guardrail” is a red herring. As State points out, and Framaco does not dispute in its reply, this regulation was not incorporated into the contract and is, thus, immaterial. Notably, Section 055213 discusses “Handrails and Top Rails of Guards” as a unit, with both requiring the same structural performance requirements. Exhibit 5 at DOS-PTMO-00984747. Further, this section is expressly applicable to the use of railings on roof parapets, suggesting that it governs, in part, safety-related railings. *See id.* at DOS-PTMO-00984745. The need for the installation of such railings on the SVC roof – around equipment being accessed by workers and others, as required by SVC M122 (the mechanical roof plan, at note 6) – thus makes sense.²

Decision

The contract required Framaco to design and install railings on the SVC roof for all equipment 3.1m or less from the roof edge, and Framaco is not entitled to recover additional costs for doing this contractually-required work. Framaco’s 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

² Framaco also failed to argue or provide evidence that it incurred additional costs to install approximately 12.5 meters of extra railing, which Framaco appears to argue was beyond the requirements of the contract. Appellant’s Opening Brief at 7; Appellant’s Reply at 8. Relief under the Changes clause is predicated on the contractor showing “an increase or decrease” in costs to perform the work at issue. 48 CFR 52.243-4(d) (“If any change under this clause causes an increase or decrease in the Contractor’s cost . . . [to perform] . . . any part of the work under this contract, . . . the Contracting Officer shall make an equitable adjustment and modify the contract in writing.”).