



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

**THIS OPINION WAS INITIALLY ISSUED UNDER PROTECTIVE ORDER AND
IS BEING PUBLICLY RELEASED IN ITS ENTIRETY ON JULY 31, 2024**

DENIED: July 23, 2024

CBCA 7561

FRAMACO INTERNATIONAL INC.,

Appellant,

v.

DEPARTMENT OF STATE,

Respondent.

Douglas L. Patin, Erik M. Coon, and Jennifer M. Ersin 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 131 cases 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 19, 2023 (Order), which largely adopted the parties' proposal to resolve approximately 100 of appellant's non-consolidated appeals brought pursuant to Board Rule 53 (48 CFR 6101.53 (2023)), along with certain claims in four of its consolidated appeals that were not based on Government-caused delay. *See* Rule 53 (governing accelerated procedures, which are available at an appellant's election but limited to appeals involving amounts in dispute 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 derived from any damage amounts awarded to Framaco in the Selected Appeals. In a subsequent joint response filed with the Board on March 19, 2024, the parties confirmed that the Order applies to the appeals described above.

This appeal (CBCA 7561) arises from State's denial of Framaco's claim of \$32,552, plus interest, for costs incurred in modifying and relocating residual current device (RCD) enclosures. First, Framaco contends that it is entitled to compensation for modifying RCD enclosures to include different locking mechanisms and no dead front panel. Second, Framaco claims that it reasonably interpreted certain drawings in the contract to require installing the RCD enclosures in the ceilings or, alternatively, that the drawings contained latent ambiguities regarding the enclosure locations. For the following reasons, we deny the appeal.

Background

I. The Contract

In September 2015, State awarded Framaco a firm-fixed-price contract, initially valued at approximately \$97 million to construct the New Embassy Compound (NEC) in

Port Moresby, Papua New Guinea.¹ Appeal File, Exhibit 1 at DOS-PTMO-00982321.² The project was originally designed in 2010 as a “Standard Secure mini-Compound” (SSmC) with a scope including 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. Exhibit 2 at DOS-PTMO-00982414. Construction of the SSmC 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 therefore descoped the work under the 2012 contract and closed out that contract. The project was redesigned under an expanded NEC, incorporating the completed portions of the SSmC project as well as surplus equipment and materials, where 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 (NOB), a marine service guard residence, a service entry/utility building, an enlarged support annex, and a new recreation facility. *Id.* This appeal pertains to a dispute that arose during the construction of the NOB and MSGR under the 2015 contract (contract).

The contract states that additional manuals, handbooks, codes, standards, and specifications may be incorporated into the contract if cited or referenced within the contract. Exhibit 1 at DOS-PTMO-00982375. In paragraph C.2.1.1.2, “Applicable Building Codes,” the contract incorporates the 2013 OBO Design Standards and requires that these standards be followed for the construction of the NOB and MSGR. Exhibit 2 at DOS-PTMO-00982417. The 2013 OBO Design Standards, in turn, incorporate National Fire Protection Association (NFPA) Code 70 (11th ed. 2011), known as the National Electrical Code (NEC). Exhibit 107 at DOS-PTMO-01346000. The NEC is also referenced in Section 260505 of the contract, “COMMON WORK RESULTS FOR ELECTRICAL, COMMUNICATIONS AND ELECTRONIC SAFETY,” which includes the following requirements:

A. Comply with the OBO Electrical Code (NFPA 70 “National Electrical Code” as amended by OBO):

1. Electrical Components, Devices, and Accessories: Listed and labeled as defined in the NFPA 70, Article 100 by testing agency acceptable to Project Director/[Contracting Officer’s Representative (COR)] based upon input from the OBO/PDCS/DE/EE, and marked for intended use.

¹ The contract was issued on July 6, 2015, and awarded on September 30, 2015. Appeal File, Exhibit 1 at DOS-PTMO-00982303-04.

² All exhibits are found in the appeal file, unless otherwise noted.

Exhibit 8 at DOS-PTMO-KCCT-0051026. Section 262726 of the contract, “WIRING DEVICES,” required Framaco to install receptacles throughout the embassy compound. Exhibit 9 at DOS-PTMO-01402960. The contract, in various provisions, also contains installation instructions for receptacles.

A. Applicable Design Standards for Residual Current Devices

First, Framaco was required to install certain receptacles in the NOB and MSGR with a residual current device (RCD) enclosure for protection.³ The contract provides that outlets designated for circuit protection must be fed from a circuit breaker that “shall be installed in an enclosure adjacent to the first receptacle in the branch circuit, or group-mounted in an enclosure adjacent to the panelboard serving the circuit.” Exhibit 9 at DOS-PTMO-01402961. In addition, NEC section 110.27, “Guarding of Live Parts,” supplies guidance on how electrical equipment operating at fifty volts or more must be guarded against accidental contact. Exhibit 7 at DOS-PTMO-01542616. The electrical equipment could have been protected “by approved enclosures” or by any of the following measures:

- (1) By location in a room, vault, or similar enclosure that is accessible only to qualified persons.
- (2) By suitable permanent, substantial partitions or screens arranged so that only qualified persons have access to the space within reach of the live parts. Any openings in such partitions or screens shall be sized and located so that persons are not likely to come into accidental contact with the live parts or to bring conducting objects into contact with them.
- (3) By location on a suitable balcony, gallery, or platform elevated and arranged so as to exclude unqualified persons.
- (4) By elevation of 2.5 [meters (m)] (8 ft[.]) or more above the floor or other working surface.

Id. NEC section 404.8 contained further specifications regarding the accessibility of the RCDs:

³ For this appeal, it is pertinent to note that an RCD is equivalent to a ground-fault circuit interrupter (GFCI) circuit breaker. A GFCI is defined as “[a] device intended for the protection of personnel that functions to de-energize a circuit,” and a circuit breaker is “[a] device designed to open and close a circuit by nonautomatic means and to open the circuit automatically on a predetermined overcurrent without damage to itself when properly applied within its rating.” Exhibit 106 at FRAM-1819441, -1819443.

(A) Location. All switches and circuit breakers used as switches *shall be located so that they may be operated from a readily accessible place.* They shall be installed such that the center of the grip of the operating handle of the switch or circuit breaker, when in its highest position, is not more than 2.0 m (6 ft[.] 7 in.) above the floor or working platform.

Exhibit 106 at FRAM-1819681-82 (emphasis added). The code defines “readily accessible” as “[c]apable of being reached quickly for operation, renewal, or inspections without requiring those to whom ready access is requisite to climb over or remove obstacles or to resort to portable ladders, and so forth.” *Id.* at FRAM-1819440. The NFPA issued a 2017 version, which clarified that if “actions such as to use tools (other than keys)” needed to be used to open the enclosure, then it is not considered “readily accessible.” Exhibit 34 at DOS-PTMO-03100968.

B. Placement of RCDs

Second, the contract contains provisions that apply to the installation location of electrical equipment. NEC section 110.26 provides requirements for the amount of clearance between service equipment, switchboards, panelboards, or motor control centers and the ceiling of a work space:

(A) Working Space.

....

(3) Height of Working Space. The work space shall be clear and extend from the grade, floor, or platform to a height of 2.0 m (6 ½ ft[.]) or the height of the equipment, whichever is greater. Within the height requirements of this section, other equipment that is associated with the electrical installation and is located above or below the electrical equipment shall be permitted to extend not more than 150 [millimeters] (6 in.) beyond the front of the electrical equipment.

....

(E) Dedicated Equipment Space. All switchboards, panelboards, and motor control centers shall be located in dedicated space and protected from damage.

....

(1) Indoor. Indoor installations shall comply with 110.26(E)(1)(a) through 110.26(E)(1)(d).

(a) Dedicated Electrical Space. The space equal to the width and depth of the equipment and extending from the floor to a height of 1.8 m (6 ft[.]) above the equipment or to the structural ceiling, whichever is lower, shall be dedicated to the electrical installation. No piping, ducts, leak protection apparatus, or other equipment foreign to the electrical installation shall be located in this zone.

Exhibit 106 at FRAM-1819452-53. In other words, the NEC requires that electrical equipment, including panelboards, be placed in a space within six feet above the top of machinery. *See id.*

NEC Article 404 lists installation guidelines for “all switches, switching devices, and circuit breakers,” which includes the RCDs at issue. Exhibit 106 at FRAM-1819680. As for location, Framaco was informed that the RCDs “shall be located so that they may be operated from a readily accessible place” and that the devices may not be “more than 2.0 m (6 ft[.] 7 in.) above the floor or working platform.” *Id.* at FRAM-1819681-82. Section 262726 of the contract is more specific, stating that the RCDs “shall be installed in an enclosure adjacent to the first receptacle in the branch circuit, or group-mounted in an enclosure *adjacent to the panelboard* serving the circuit.” Exhibit 9 at DOS-PTMO-01402961 (emphasis added). Accordingly, the written terms of the contract require panelboards to be installed within six feet above the top of electrical equipment and for RCDs to be located adjacent to the panelboard that is serving its circuit.

The contract also included drawings that showed State’s design for several rooms within the MSGR and NOB buildings. Several of these drawings, by referencing drawing CMPD E8910, matched the written terms by requiring that RCDs be placed adjacent to panelboards. *See* Exhibit 10 at keynote 1; Exhibit 11 at keynote 1; Exhibit 14 at keynote 5; Exhibit 15 at PanelBoard Schedule NX1K1 & NX1K2. Drawing CMPD E8910, in detail 13, provides that RCD enclosures shall be “mounted immediately adjacent to the branch circuit panelboard [that is] indicated.” Exhibit 12 at design 13 n.1.

However, two drawings instruct Framaco to install the RCD enclosures above the ceiling, not adjacent to the panelboards. Exhibit 10 at keynote 12; *see* Exhibit 13 at note 1. Drawing MSGR E411, which also references drawing CMPD E8910, contained a note that states that RCDs in room M120 of the MSGR should be mounted above the ceiling and coordinated with the corresponding ceiling access panel. Exhibit 10 at keynote 1, 12. Drawing NOB E4002 includes a similar note, instructing Framaco to route certain circuits

through RCD enclosures that are mounted above the ceiling in room 1800 of the NOB. Exhibit 13 at note 1.

II. The Parties' Disputes

Framaco sent State submittal no. 260534-07-0 for approval on September 21 (or 25), 2017.⁴ Exhibit 20 at DOS-PTMO-02913214. This submittal contained information pertaining to some of the electrical boxes and wall-mounted RCD enclosures it planned to use. *Id.* Framaco indicated that it would be using “Pentair” brand enclosure boxes, specifically the “Continuous Hinge With Clamps, Type 4 box.” *Id.* at DOS-PTMO-02913253. The included specifications noted that the box is made of stainless steel and has “screw-down clamps on three sides [of the] door.” *Id.* State approved this submittal on November 23, 2017. Exhibit 21 at DOS-PTMO-02913212. Subsequently, Framaco installed the RCD enclosures with the screw-down clamps in rooms in both the MSGR and NOB. *See* Exhibit 34 at DOS-PTMO 03100963-64. Pursuant to drawings MSGR E411 and NOB E4002, Framaco placed the enclosures above the ceiling in rooms M120 and NOB 1800. *Id.*

On December 28, 2020, an OBO engineer expressed concerns about “deficient and defective” work in an email to Framaco. Exhibit 25 at DOS-PTMO-02093545. The engineer wrote that there has been “some confusion” about where the RCD enclosures needed to be mounted and that the enclosures had not been installed according to the NEC. *Id.* On January 15, 2021, the engineer emailed State again, stating that there were additional issues with the RCD enclosures because “live parts [were] exposed in [the] panel,” there was no dead front panel protection,⁵ and the enclosures were not accessible. Exhibit 118 at DOS-PTMO-M&H-0004470. Discussions on the RCD enclosure issues began in early March 2021, and State instructed Framaco to move the RCDs below the ceiling. *See* Exhibit 28 at DOS-PTMO-02423935. In an email dated July 1, 2021, Framaco asserted that “[t]his work is additional work to Framaco’s contract, as directed by the OBO [Electrical Engineer (EE)] and COR, and will be the subject of a Request for Equitable Adjustment (REA) for the cost and time associated with all of the revisions.” *Id.*

⁴ The submittal includes a date of “September 21, 2017” and an “original submittal date” of “September 25, 2027.” Exhibit 20 at DOS-PTMO-02913214.

⁵ A dead front panel is a sheet of metal that ensures that the live electrical parts of a piece of equipment are not exposed to a person on the operating side of the equipment. *See* Exhibit 106 at FRAM-1819441. State contends that the contract required Framaco to install these panels on all RCDs.

Due to numerous concerns over the contract's progress rate, State sent Framaco a "Third Letter of Concern due to Late Completion" on June 14, 2021. Exhibit 27 at DOS-PTMO-02394310. In the letter, State included a note about the issues with "[r]esidual current device/GFI panels," stating that these devices "have been installed and manufactured incorrectly and not compliant with the electrical code." *Id.* at DOS-PTMO-02394315. Framaco responded on July 2, 2021, writing:

Framaco disagrees with OBO's interpretation of the electrical code requirements for [the] manufacture and installation of the Residual Current Devices (RCD). OBO is describing these devices as panels in their description of the concern, then incorrectly applying the code requirements for a panelboard, which would require the device to be mounted in an accessible location and have dead front panel protection, similar to a panelboard. But clearly, by the name of the "device," it is not a panelboard, it is a ground fault circuit interruption (GFCI) device with test and reset buttons, not a circuit breaker. The residual current devices need to be mounted inside an enclosure, but the code requirements for a panelboard do not apply. The product data submittal for the RCD devices was accepted by OBO and the installed devices were procured and installed according to the accepted submittal. The installation detail in CMPD E8910 Detail 13 refers to the device as an enclosure, not a panelboard. Framaco will modify the device enclosures for these devices to provide a deadfront and relocate the device enclosure under protest. However, this additional work will be submitted in a REA for cost and/or time.

Exhibit 30 at DOS-PTMO-01902316. State responded on August 11, 2021, stating that contrary to Framaco's assertions, "the Government is . . . enforcing compliance with contract requirements." Exhibit 32 at DOS-PTMO-03087380. As to Framaco's assertion regarding the RCD enclosures, State answered:

11. Residual current device. OBO maintains that Framaco is contractually required to comply with the OBO Electrical Code and NFPA 70 per specification 262726.

Id. at DOS-PTMO-03087388.

III. Framaco's Appeal

On August 22, 2022, Framaco submitted a request for a contracting officer's final decision that sought to recover \$32,552 of "direct costs incurred by Framaco as a result of

the Government's direction to relocate the Residual Current Devices and perform changes at all RCD enclosures." Exhibit 33 at DOS-PTMO-03090953. Framaco argued that equipping the RCD enclosures with different locking mechanisms and dead front panels and relocating the RCDs constituted contractual changes. *Id.* at DOS-PTMO-03090956-59. State's contracting officer denied the claim on October 24, 2022. Exhibit 34. On November 1, 2022, Framaco filed this appeal.

Discussion

Modification of the RCD Enclosures

In its appeal, Framaco asserts it is entitled to compensation for its costs to "modify," at State's direction, "RCD enclosures that had no dead front panel and screw down locking mechanisms." Appellant's Opening Brief at 4. Framaco contends that its initial actions were based on a "reasonable interpretation" of the contract because the Government approved the "Pentair" brand enclosures listed in submittal no. 260534-07-0. State, conversely, argues that Framaco's argument is without merit because the contract required RCDs to have a dead front panel and be readily accessible. Because the parties disagree as to what was required in the contract, this is an issue of contract interpretation.

Framaco's argument that the agency's approval of submittal no. 260534-07-0 constitutes a change to the specifications is without merit. The Board has previously held that "the Government's approval of submittals . . . do[es] not constitute the Government's acceptance of non-compliant work." *R.C. Professional Services, Inc. v. Department of Homeland Security*, CBCA 775, 09-2 BCA ¶ 34,308, at 169,472. The terms of a contract dictate the requirements for the services being provided, and approval of a non-compliant submission does not remove the contractor's obligation to render services in accordance with the terms of the contract. *Id.* As such, the inquiry here as to whether Framaco's installation of RCD enclosures with screw-down locking mechanisms and no dead front panels was in compliance with the contract begins with an examination of the plain language of the contract's terms.

To determine whether Framaco can recover for its claimed damages, we start with a review of the contract's plain language. *LAI Services, Inc. v. Gates*, 573 F.3d 1306, 1314 (Fed. Cir. 2009) (citing *M.A. Mortenson Co. v. Brownlee*, 363 F.3d 1203, 1206 (Fed. Cir. 2004)). We read the contract as a whole, giving reasonable meaning to all its parts. *Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991). If the plain language of the contract is unambiguous on its face, the inquiry ends, and the contract's plain language controls. *Hunt Construction Group, Inc. v. United States*, 281 F.3d 1369, 1373 (Fed. Cir. 2002). "An interpretation that gives meaning to all parts of the contract is to be preferred

over one that leaves a portion of the contract useless, inexplicable, void, or superfluous.” *NVT Technologies, Inc. v. United States*, 370 F.3d 1153, 1159 (Fed. Cir. 2004); see Restatement (Second) of Contracts § 203(a) (1981) (contract interpretation should not leave a part of a contract “of no effect”).

The plain language of NEC section 110.27 reveals that electrical equipment operating at fifty volts or more “shall be guarded against accidental contact by approved enclosures” or “[b]y suitable permanent, substantial partitions or screens arranged so that only qualified persons have access to the space within reach of the live parts.” Exhibit 7 at DOS-PTMO-01542616. In other words, the RCDs (pieces of electrical equipment that operate at more than fifty volts) were required to be guarded by dead front panels or another mechanism that would protect the devices against incidental contact. This language is not ambiguous. Here, the live parts of the RCDs that Framaco initially installed were not guarded by a dead front panel or the equivalent and, thus, were not in accordance with the contract’s terms.

Framaco contends that the inclusion of the words “approved enclosures” in NEC section 110.27 means that the screw-down boxes it installed complied with the contract because State “approved” Framaco’s submittal of these boxes in 2017. Appellant’s Opening Brief at 4. The only submittal Framaco offered in the record is submittal no. 260534-07-0, which includes the “Pentair” brand wall-mounted enclosure box Framaco used for the RCD enclosures. Exhibit 20 at DOS-PTMO-02913253. However, NEC section 110.27 refers to mechanisms that can be used to guard certain electrical appliances from incidental contact, not the accessibility or placement of such enclosures. See Exhibit 7 at DOS-PTMO-01542616. The contract is clear that, in addition to mounting the RCDs in enclosures, the enclosures must include a type of screen that would protect the electrical equipment within. *Id.* Submittal no. 260534-07-0 does not deal with this type of contract specification, and State did not “approve” the “Pentair” brand enclosures to be suitable for the guarding of live electrical parts.

Additionally, the contract required RCD enclosures to be “readily accessible.” Exhibit 106 at FRAM 1819440. An enclosure is considered “readily accessible” if, per the NEC, it is “[c]apable of being reached quickly . . . without requiring those to whom ready access is requisite to . . . remove obstacles.” *Id.* This contract provision is also clear. In this case, the RCDs Framaco installed were enclosed in “Pentair” brand boxes with screw-down clamps that need a screwdriver to be opened. Because a screwdriver is needed to open the enclosures, the screws are “obstacles” that prevent access before their removal. As stated above, it is irrelevant that State approved the “Pentair” brand boxes in submittal no. 260534-07-0. As such, the RCDs enclosures were not in compliance with the plain meaning of the contract’s terms.

Finally, in its briefs, Framaco makes several arguments concerning the agency's actions surrounding the installation and modification of the RCD enclosures. Because we find that the contract's provisions are unambiguous, we need not resort to extrinsic evidence. It is well-established that "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); *McAbee Construction, Inc. v. United States*, 97 F.3d 1431, 1453 (Fed. Cir. 1996). Accordingly, Framaco is not entitled to compensation for the modification of the RCD enclosures because it did not initially install the enclosures in accordance with the contract's terms.

Relocation of the RCD Enclosures

Next, Framaco claims it is entitled to compensation for relocating the RCD enclosures from above the ceiling to adjacent to the panel boards. Framaco contends that it reasonably interpreted the contract's drawings and specifications to require the placement of the RCD enclosures above the ceilings. In the alternative, Framaco argues that the contract contained latent ambiguities regarding the enclosure locations. State, in contrast, asserts that the ambiguities are patent. In examining the plain language of the contract, we find that the contract's terms are not clear, and there is an ambiguity present. "An ambiguity exists when a contract is susceptible to more than one reasonable interpretation." *GCC Technologies, LLC v. Department of Education*, CBCA 7129, 22-1 BCA ¶ 37,976, at 184,437 (quoting *ACM Construction & Marine Group, Inc. v. Department of Transportation*, CBCA 2245, et al., 14-1 BCA ¶ 35,537, at 174,151).

The written terms, in NEC section 110.26 and contract section 262726, require installation of panelboards within six feet above the top of electrical equipment and RCD enclosures to be located adjacent to the panelboard that is serving its circuit. Exhibit 106 at FRAM-1819452-453; Exhibit 9 at DOS-PTMO-01402961. However, drawings MSGR E411 and NOB E4002 contain notes that instruct Framaco to mount RCD enclosures above the ceiling. Exhibit 10 at keynote 12; Exhibit 13 at note 1. Accordingly, because the contract contains conflicting instructions on where to place RCD enclosures, the contract is susceptible to more than one reasonable interpretation and is, thus, ambiguous.

Because an ambiguity exists, we must next determine whether the ambiguity is patent or latent. *GCC Technologies*, 22-1 BCA at 184,437. A patent ambiguity "is so glaring that it is unreasonable for the contractor not to discover and inquire about it," *id.*, whereas a latent ambiguity is "neither . . . substantial nor obvious." *Omniplex World Services Corp. v. Department of Homeland Security*, CBCA 5971, 19-1 BCA ¶ 37,209, at 181,149-50 (2018) (citing *K-Con, Inc. v. Secretary of the Army*, 908 F.3d 719, 722 (Fed. Cir. 2018); *Triax Pacific, Inc. v. West*, 130 F.3d 1469, 1475 (Fed. Cir. 1997)). If an ambiguity is patent and

the contractor fails to inquire, the ambiguity “will be resolved against the contractor.” *Triax Pacific*, 130 F.3d at 1475. However, if the ambiguity is latent, the general rule is that the contract’s language will be interpreted in favor of the non-drafting party. *GCC Technologies*, 22-1 BCA at 184,437.

In this case, drawings MSGR E411 and NOB E4002 instruct Framaco to mount the RCD enclosures above the ceiling. Exhibit 10 at keynote 12; Exhibit 13 at note 1. These instructions are inconsistent with several other drawings and specifications contained in other sections of the contract that require installation of RCD enclosures adjacent to the panelboards. *See* Exhibits 9 at DOS-PTMO-01402961, 11 at keynote 1, 12 at design 13 n.1, 14 at keynote 5, 15 at PanelBoard Schedule NX1K1 & NX1K2, 106 at FRAM-1819452-53, 680-82. In fact, drawing MSGR E411 itself contains conflicting information because it also orders Framaco to mount the RCD enclosures “immediately adjacent to the branch circuit panelboard [that is] indicated.” Exhibit 12 at design 13 n.1. This discrepancy is obvious and reasonably should have been noticed when the contract was awarded. Therefore, the ambiguity is patent, and Framaco had a duty to inquire.

Accordingly, because Framaco did not inquire about the contradictory RCD enclosure specifications, it bears the risk of misinterpretation. For the foregoing reasons, we find that Framaco is not entitled to compensation for the relocation of the RCD enclosures.

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