



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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**THIS OPINION WAS INITIALLY ISSUED UNDER PROTECTIVE ORDER AND  
IS BEING PUBLICLY RELEASED IN ITS ENTIRETY ON OCTOBER 1, 2024**

GRANTED IN PART: September 27, 2024

CBCA 7847

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 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.

In this appeal (CBCA 7847), Framaco seeks \$74,498 for six work items which Framaco asserts resulted from State’s alleged constructive design changes and design discrepancies, and/or State’s alleged requests that Framaco perform work outside the scope of the contract. As explained below, with the exception of one item, the appeal is denied.

### Background

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. Appeal File, Exhibit 1 at DOS-PTMO-00982321.<sup>1</sup> 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. 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

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<sup>1</sup> All exhibits are found in the appeal file, unless otherwise noted.

detachment was planned for Port Moresby and the embassy staffing requirement was increased. *Id.* State therefore descope 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) and annex (NOX), a marine service guard residence (MSGR), a service entry/utility building, an enlarged support annex, and a new recreation facility. *Id.*

### Discussion

This appeal involves Framaco's claims that State directed Framaco to perform additional work arising from "either (a) design errors/omissions in the government provided design documents or (b) direction from the Government to Framaco to perform additional work not contained in the design documents." Appellant's Opening Brief at 1. The specific work involved (1) changing an exposed door frame to a concealed one, (2) modifying construction of a storefront and soffit in a staircase to accommodate fire rated safety glass, (3) adding additional steel members at locations not shown in structural design drawings (but shown in architectural drawings), (4) adding an underground vault for an irrigation system, (5) providing additional grounding system connections for photovoltaic (PV) panel support frames in addition to the already made connections to the lightning protection system, and (6) modifying government furnished equipment (GFE) security gates and barriers to upgrade them to design requirements. *Id.* at 2-10. Each claim is addressed in turn below.

#### 1. NOX Level 3 Wood Panel Door

The issue here is whether the contract required an exposed frame around the door located within the partition separating the Chief of Mission and deputy room on NOX 3 (new office annex, third floor), as Framaco asserts, Appellant's Opening Brief at 2-3, or whether, as State asserts, the contract required the doorframe edges to be concealed to match the wall paneling on either side of the door, Respondent's Initial Brief at 1-2. Framaco seeks \$11,330.64 in costs for this claim. Exhibit 177 at DOS-PTMO-03714758.

According to the parties, there are two contract drawings that are relevant here – NOB A544 ("Architectural Interior Door Details"), Exhibit 26, and NOB A419 ("Architectural Interior Elevations"), Exhibit 24. *See* Appellant's Reply Brief at 1-2; Respondent's Initial Brief at 1. Framaco argues that drawing NOB A544, detail 17, "shows an exposed frame on the interior side of the ambassador's office[,]" and that NOB A419 only shows a general elevation of the door panels. Appellant's Reply Brief at 1-2. State asserts that "NOB A544, Detail 17 identified a concealed door frame, with the wood veneer extending to conceal the

solid edge on the office side of the door, in agreement with NOB A419, Detail 8, which also showed a concealed door frame with the top joint of the door aligned with the adjacent wall panels.” Respondent’s Initial Brief at 1-2.

The parties evidently have conflicting views on what the drawings show and require, and the drawings themselves are unhelpful in resolving the issue. In looking at the drawings, there is no obvious indication of a concealed door frame. Drawing NOB A544 showed the door jamb at detail 11 and the door head with a concealed hinge at detail 17. Exhibit 26. However, contrary to State’s argument, neither NOB A544 nor NOB A419 clearly or obviously show or “identify” a concealed door frame or indicate, in the drawing notes or in writing on the drawings themselves, that one should be provided. Thus, because the drawings are unclear, i.e., neither refuting Framaco’s assertion as to what they say nor supporting State’s position, we find a latent ambiguity in the contract drawings and the rule of *contra proferentem* applies. See *ACM Construction & Marine Group, Inc. v. Department of Transportation*, CBCA 2245, et al., 14-1 BCA ¶ 35,537, at 174,151 (“When a dispute arises as to the interpretation of a contract and the contractor’s interpretation of the contract is reasonable, tribunals apply the rule of *contra proferentem*, which requires that ambiguous or unclear terms that are subject to more than one reasonable interpretation be construed against the party who drafted the document.”). Framaco’s claim on this issue is granted on this basis.

## 2. Requirement for Two-Hour Fire Rated Glass Partition in Staircase

The contract provided:

In case of apparent error, discrepancy, or omission either in the Standard Design Requirements Documents or the Project Specific Requirements furnished by the Government to the Contractor, the Contractor shall submit the question promptly to the [contracting officer’s representative (COR)] for clarification. The COR shall review the question and respond in writing. If it is determined by the COR that there is an error, discrepancy, or omission, and changing it would modify the contract, the Contractor must request a written decision from the [contracting officer (CO)]. *The Contractor shall not proceed with any affected work before receipt of CO’s written approval. Until that decision is received, any affected work shall be entirely at the contractor’s own risk and expense.*”

Exhibit 1 at DOS-PTMO-00982375 (emphasis added). The contract also required that Stair A in the NOX include “two-hour” fire rated safety glass at the connection between the storefront glass panels and soffits. Exhibit 93.

In an email dated September 24, 2024, Framaco noted its concern regarding the drawing, NOB A544, that showed the placement of the glass partition, stating:

NOB A544, Detail 9, shows . . . the wood panel flush with the inside face of the glass partition (stair side). . . . The actual glass partition profiles are significantly narrower than the profile depicted in the detail. If the glass partition profile is placed so that the interior surfaces are flush, the attachment of the profile to the . . . partition framing above is not possible . . . .

Exhibit 96 at DOS-PTMO-02597163; *see* Exhibit 26.

Framaco proposed three alternatives to address the issue. Exhibit 96 at DOS-PTMO-02597163. Via an email dated November 4, 2020, State, through the COR, selected one of the alternatives “with a minor revision” and, in the same email, asked Framaco to “finalize the shop drawings for the areas affected by this detail and submit for final review.” *Id.* at DOS-PTMO-02597160.

In its briefing on this issue, Framaco asserts that, during installation, it “discovered and notified the Government [of] . . . a potential fire code violation issue concerning the connection between the storefront and soffit” and proposed three alternative solutions to address the “design deficiency.” Appellant’s Opening Brief at 4; *see also* Exhibit 96. Framaco argues that State’s design was defective because “the constructed soffit and installed storefront as per the contract drawings w[ere] not sufficient to provide [a] two-hour[] fire rating in staircases at the connection between [the] storefront and soffit.” Appellant’s Opening Brief at 4. It also argues that, due to the design defect in the Government’s drawings, it was required to do additional work for which it should be compensated for its costs in the amount of \$13,229.66. Exhibit 177 at DOS-PTMO-03714758.

State counters that Framaco provides no evidence that the design was defective. State additionally argues that Framaco’s proposed alternative to complete the work was part of Framaco’s “coordination obligations” and its responsibility under the contract “to determine means, methods and techniques to execute the construction” – not, as Framaco alleges, work outside of the scope of the contract. Respondent’s Initial Brief at 2-3. State also contends that Framaco proceeded with the “allegedly changed work without direction or approval from the [CO] and assumed the risk and expense of proceeding with the work.” Respondent’s Reply Brief at 5.

As an initial matter, as noted by State in its reply brief, Framaco’s correspondence to State during construction regarding Framaco’s concern with the glass partition does not at

all refer to a potential fire code violation when discussing the issue with the partition. Respondent's Reply Brief at 4-5; Appellant's Opening Brief at 4 (citing Exhibits 89-92); *see* Exhibit 96. In any event, as for this appeal, the problem for Framaco is that it communicated with the COR regarding the issue with the glass partition but did not request a written decision from the CO about any potential change to the contract due to having to remedy the issue. *See* Exhibit 96. Neither party has presented any facts regarding whether the COR had notice of a possible design error or that Framaco noted, or expressed any concerns about, the COR's failure to make a determination regarding whether the drawing, NOB A544, contained an error, correction of which would require a contract modification. Instead, Framaco, in its email communication to the COR, does not characterize the issue concerning the glass partition as a "design error" but, instead, as a "detail issue" with the concern seemingly related to the size of the glass partitions presumably procured for the project. *Id.* at DOS-PTMO-02597163 ("NOB A544, Detail 9, shows the interface detail between these two architectural materials inside the stairwell with the wood panel flush with the inside face of the glass partition. . . . *The actual glass partition profiles are significantly narrower than the profile depicted in the detail.*" (emphasis added)). Thus, the record is unclear whether, as a threshold matter, Framaco flagged a design error in the drawing for the COR to consider or whether, instead, there was a problem with the glass partitions obtained for the project.

In short, the factual record is not sufficiently developed as to the COR's actions, assuming any were required based on the information conveyed by Framaco (*see* Exhibit 96 at DOS-PTMO-02597163), relating to making a determination as to whether the drawing at issue contained a design error. However, what the record does show and what is undisputed is that Framaco proceeded with the work relating to the glass partition – the "alternative" plan – without receiving the CO's written approval. Without such approval, it completed the work at its "own risk *and expense.*" Exhibit 1 at DOS-PTMO-00982375 (emphasis added). Accordingly, Framaco's claim as it relates to the glass partition is denied.

### 3. Marine Service Guard Residence Canopy

The MSGR was designed with a canopy overhanging the terrace on the building's east side. Exhibit 30. The structural drawing, MSGR S114, detailed the "Structural Enlarged East Canopy Plans." *Id.* The architectural drawing, MSGR A104, showed the "reflected ceiling plans" including a schematic of the transition from a wood plank soffit to an aluminum soffit, and the architectural drawing, MSGR A513, showed the same wood-to-aluminum transition detail with a "steel channel w/HPC" shown between and perpendicular

to the two soffits.<sup>2</sup> Exhibits 21, 25; *see also* Respondent’s Initial Brief at 3 (noting that architectural drawings “MSGR A104, Detail 1 and A513, Detail 1, both required a transition from wood to aluminum soffit”).

In this appeal, Framaco argues that there was a design error in that “[t]he structural design drawings did not include steel members at locations” where necessary and seeks \$4533.78, which it purportedly incurred addressing this issue. Appellant’s Opening Brief at 5; Exhibit 177 at DOS-PTMO-03714758. Framaco asserts that, “[h]ad the Government required the subject steel membranes, it should have included an unambiguous requirement in the [s]tructural [d]rawings.” Appellant’s Reply Brief at 6. In a November 3, 2020, email on the issue to the COR, Framaco stated:

MSGR architectural level 1 reflected ceiling plan (RCP) A104 shows the wood soffit for the general ceiling finish in the field area and an edge strip against the building with aluminum soffit finish. At the transition from the wood soffit to the aluminum soffit, there’s also a change of elevation. Reference the following MSGR drawings in the IFC<sup>[3]</sup> drawings and excerpted in the sketches; A101, A311 Section 2, and A513 Detail 1. In the Northeast corner of the MSGR building, the East canopy structural steel framing is missing the C12x20.7 channel steel for the change in elevation and transition from wood to aluminum soffit materials. We’ve proposed adding the required structural steel (channel and angle steel) around the corner of the building for the transition and the elevation change in the sketches. Please review the sketches uploaded to ProjNet and let me know if you have any questions or comments. We would also request OBO approval to use locally procured steel for the installation. All necessary added steel will be prepared, primed, and coated with the required HPC.

Exhibit 99 at DOS-PTMO-02419765.

State, for its part, disputes Framaco’s claim of a design error. State argues that Framaco was required to comply with both the structural design drawings *and* the architectural drawings. *See* Respondent’s Reply Brief at 6. Specifically, State contends that Framaco was required to comply with the architectural drawings that showed a transition from wood to aluminum soffits. Respondent’s Initial Brief at 3. Additionally, State

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<sup>2</sup> The panel assumes that the acronym “HPC” stands for “high performance coating.”

<sup>3</sup> The panel assumes that the acronym stands for “Issued for Construction.”

discusses the fact that the structural drawings reference the architectural drawings and vice versa as evidence that each document should be considered in the context of the other. Respondent's Reply Brief at 6.

Framaco's assertion that it should receive compensation for doing steel work not shown in the structural drawings lacks merit. Contract drawing CMPD G1.000, titled "Civil General Notes, Abbreviations and Legend," states that "[a]ll drawings are considered to be part of the contract document [and t]he contractor shall be responsible for the review and coordination of all drawings and specifications prior to the start of construction." Exhibit 19 n.5. Further, the contract expressly states that the structural and architectural drawings should be read together. General drawing S091, titled "Structural Notes," states in relevant part at general note 9: "Refer to the *Architectural* . . . drawings for the size and location of . . . miscellaneous steel before detailing structural members or placing concrete." Exhibit 203 at DOS-PTMO-00981185 (emphasis added). Thus, the contract specifically required the contractor to read the structural and architectural drawings in concert prior to the commencement of work. Although the structural drawing, MSGR S114, may not have shown the steel channel, the architectural drawing, MSGR A513, did. Exhibits 25, 30. For us to find for Framaco, we would have to conclude that it was not obligated to consider the architectural drawing which showed the placement of the steel channel. However, such a reading would be in direct contradiction to the contract terms.

Notably, Framaco does not argue that it was required to complete work that was outside the scope of both the architectural and structural drawings – i.e., work that could not be found in either drawing. Instead, it asserts "that the structural drawings failed to include some structural elements in the design." Appellant's Reply Brief at 5. However, as State explains, "[t]he fact that information shown on an architectural drawing was not repeated on the structural drawings does not mean these drawings were in conflict or there was a design discrepancy." Respondent's Initial Brief at 3. Had Framaco read the drawings together, as it was required to do, it would have identified this. Therefore, the claim is denied.

#### 4. Irrigation Tank Vault

The contract called for a "[s]pray and [d]rip automatic underground irrigation system for indicated planted softscape areas." Exhibit 62 at DOS-PTMO-01822475. Framaco's initial submittal, at detail B, showed installation of the fill valve and flow sensor "in [the]



mechanical room or outdoor valve box.”<sup>4</sup> Exhibit 60 at DOS-PTMO-01822623. In response to the submittal, State remarked:

Submitted SkyHAVESTER DRAWING NO. PRSH11101 shows both the Raw Water 2" fill line, water meter and Detail B, 2" Solenoid Valve and flow sensor to the Irrigation tank as near the tank. The water meter will be near the SVC building, per drawing C1.303, and *per submittal Detail B, the Solenoid Valve and flow sensor should be located near the Irrigation Tank, in a Valve Box which needs a 1" PVC drain to the Irrigation Tank.* Please show on shop drawing.

Exhibit 62 at DOS-PTMO-01822469 (emphasis added). Framaco concurred with State’s remarks, stating specifically:

We also concur that the Solenoid Valve and Flow Sensor per submittal Detail B will be located near the Irrigation Tank, in a Valve Box with a 1" PVC drain to the Irrigation Tank. Accordingly, these revisions are shown on the submitted revised SkyHAVESTER DRAWING NO. PRSH11101 drawing in this resubmittal numbered 328400-04-1.

Exhibit 65 at DOS-PTMO-01966591.

Framaco’s revised SkyHAVESTER DRAWING NO. PRSH11101 included the following remark:

As mentioned in the Government Remark on the previous submittal numbered 328400-04-0, we concur that the Solenoid Valve and Flow Sensor will be located in a Valve Box near the Irrigation Tank and 1" PVC drain to the Irrigation Tank will be installed.

*Id.* at DOS-PTMO-01966594.

Notwithstanding its agreement with State on the location of the solenoid valve and flow sensor, as reflected in its own revised drawing, Framaco now claims that “[c]ontrary to the contract requirements, which called for only one vault (already installed by Framaco for installation of the water meter), OBO insisted on August 3, 2019 an additional Valve Box

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<sup>4</sup> The parties use the terms “valve box,” “box,” and “vault” interchangeably. *See* Appellant’s Opening Brief at 7 n.2 & Exhibit C.

. . . to house the newly added Solenoid Valve and Flow Sensor . . . which required additional infrastructure (conduit and cabling) works.” Appellant’s Opening Brief at 7. Framaco seeks \$21,951.46 in costs for adding a concrete valve box. Appellant’s Reply Brief at 7; Exhibit 177 at DOS-PTMO-03714758.

In response, State notes that Framaco actually concurred with State’s remarks regarding the location of the solenoid valve and flow sensor. *See* Exhibit 65 at DOS-PTMO-01966591, -01966594. State adds that “Framaco’s compliance with its own submittal, and its own irrigation pump vendor’s requirements, is not a Government change to the contract.” Respondent’s Initial Brief at 4. We agree.

Framaco is not entitled to any additional costs for installing the valve and sensor based on its own revised drawing as presented in its resubmittal. *See* Exhibit 65. As an initial matter, although Framaco states that its scope included a “Planting Irrigation – Pump Station, irrigation tank piping and accessories to include **one (1) EA of vault** at the compound entry,” it references no contract document discussing or limiting the number of valve boxes required for the irrigation system project. Appellant’s Opening Brief at 7. The drawing on which Framaco relies to support its argument shows the locations of the “return line from irrigation system,” the “water meter in vault,” and the “irrigation tank,” but does not otherwise show a specific location for the valve box for the solenoid valve and flow sensor, or a limitation on the number of valve boxes required by the contract. *Id.*, Exhibit C; Exhibit 199.

Framaco’s own initial submittal, at Detail B, showed installation of the fill valve and flow sensor “in mechanical room or outdoor valve box.” Exhibit 60 at DOS-PTMO-01822623. Framaco asserts that its initial submittal relied on or was derived from the Basis of Design (BOD) manufacturer, which did not require the valve box to be near the irrigation tank. Appellant’s Reply Brief at 7. The point is immaterial. Based on Framaco’s own argument, the BOD manufacturer did not preclude installation of the valve box in this location.

On Framaco’s resubmittal, both State and Framaco agreed the fill valve and flow sensor were to be located in a valve box *near the irrigation tank*. Exhibits 62 at DOS-PTMO-01822469, 65 at DOS-PTMO-01966594. There was no difference between Framaco’s initial submittal (showing installation of the fill valve and flow sensor “in mechanical room or outdoor valve box,” Exhibit 60 at DOS-PTMO-01822623), and its resubmittal other than adding the agreed-upon location of the valve box.

Framaco asserts that it had already installed a vault/valve box near the water meter, but that State demanded installation of a second one near the irrigation tank. Appellant’s Opening Brief at 7. As support for its assertion, Framaco points to State’s remark on

Framaco's initial submittal. *Id.* (citing Exhibit 62). However, a review of the relevant remark provides no support for Framaco's assertion (noting that the valve and flow sensor should be located near the irrigation tank but not requesting two vaults or suggesting that a vault be installed near the irrigation tank in addition to one already installed – or to be installed – near the water meter). Exhibit 62 at DOS-PTMO-01822469. Indeed, Framaco, in its response to State's remark, mentions nothing about another vault at another location. Exhibit 65 at DOS-PTMO-01966591 (“[Framaco] also concur[s] that the Solenoid Valve and Flow Sensor per submittal Detail B will be located near the Irrigation Tank, in a Valve Box with a 1" PVC drain to the Irrigation Tank”). Additionally, Framaco's representative certified on the resubmittal, “I certify that the submitted items listed in this transmittal have been prepared in strict conformance with the Contract Documents. When submittals propose substitutions or deviations, these are identified on this transmittal form and clearly annotated in the material presented.” Exhibit 65 at DOS-PTMO-01966590. Thus, Framaco, on the resubmittal, certified that the work described on the resubmittal was in “strict conformance” with the contract. Framaco did not alert State that it believed to the contrary or anything different, i.e., that the installation of the vault near the irrigation tank was a deviation from the contract.

What the contemporaneous record shows is that Framaco revised its submittal to add the location of the vault and then apparently followed its own resubmittal by installing the vault near the irrigation tank as it said it would. Exhibit 65 at DOS-PTMO-01966594. Any additional work that Framaco undertook in getting this task done was not directed by State and is, thus, not compensable. The claim is denied.

##### 5. Additional PV Grounding

The contract called for solar panels (a “PV” system) to be installed on the roof of the embassy complex. Exhibit 11. The contract further specified a requirement for a grounding system for the PV panels. *Id.* at DOS-PTMO-M&H-0018669. In relevant part, the contract stated: “Install equipment grounding conductors for components, with ground continuity to main electrical ground bus of building electrical system to which PV system is connected.” *Id.*

Drawing SVC E623 outlines the electrical plan for the PV system. Exhibit 28. The PV system had an existing lightning protection system specified for installation on the roof, separate from other grounding systems. Exhibit 29 at DOS-PTMO-01951558. Drawing MCAP E131 (titled “Electrical Roof Plan – Grounding and Lightning Protection”) shows the schematics for the PV grounding system. *Id.*

Framaco subcontracted with GO ENERGY (GOEN) for the PV system, including the grounding system. Exhibit 86. Framaco asserts that the grounding protection from the LPS was independently sufficient and, per GOEN, any further grounding connections would be detrimental to the system as a whole. Exhibit 130. Framaco concedes the schematics do show an extra grounding loop connected to the LPS, but claims it is a design deficiency. Appellant's Opening Brief at 8; *see* Exhibit 86. Notwithstanding its concession as to what the schematics show, Framaco insists that the COR directed Framaco to install a separate grounding system for the PV panels that was not required by the contract. Exhibit 115. Framaco performed the work but, in this appeal, is seeking \$8554.37 in costs for doing so after the CO's denial of Framaco's claim for the work. *Id.*; Appellant's Notice of Appeal.

In its brief, State argues that Framaco's own PV subcontractor and the contract, including the OBO Electrical Code incorporated into the contract, required a separate grounding system for the PV system. Respondent's Initial Brief at 5; *see also* Exhibit 131 (In a letter to Framaco sent during construction, State questioned Framaco's statement regarding GOEN's concern, noting that the installation being done on site was "exactly per GOEN's submittal . . . [and] drawing SVC E623, amongst others").

We find that the PV grounding system installed by Framaco was specified in the contract and does not constitute additional work. *See* Exhibit 28. Framaco concedes as much in its initial brief saying that "introducing an extra grounding loop connected to the LPS (*although schematically shown on the drawing . . .*) could potentially damage the system's electronics." Appellant's Opening Brief at 8 (emphasis added).

Further, even if Framaco is correct that the separate grounding system for the PV system was additional work outside the scope of the contract, the COR, who directed Framaco to perform the work, did not have the requisite authority to bind the Government. *See Pearson E. Dubar v. Department of Agriculture*, CBCA 1895, 10-2 BCA ¶ 34,497, at 170,146-47; 48 CFR 43.102. Similar to the work involving installation of the glass partition discussed above, Framaco proceeded with the work here without receiving the CO's written approval and, without such approval, it took on the work at its "own risk *and expense*." Exhibit 1 at DOS-PTMO-00982375 (emphasis added). Therefore, the claim is denied.

#### 6. Main Compound Entry Pavilion – Security Gates

The contract called for security gates at the entrance of the MCAP. Exhibit 12. Per the statement of work, Framaco was allowed, but not required, to make use of GFE from a prior contractor for the security gate(s) and barriers. Exhibits 2 at DOS-PTMO-00982418, 138 at DOS-PTMO-03570022. Notwithstanding this contract provision, Framaco claims that

“OBO *directed* Framaco to use the GFE surplus road barrier for MCAP ‘AS IS.’” Appellant’s Opening Brief at 9 (emphasis added).

Framaco engaged a subcontractor, Sloan Security Group (Sloan), to install the surplus gate and barrier components that Framaco elected to use. Exhibit 177 at DOS-PTMO-03714753. Several electrical panelboards existed around the MCAP for various electrical components to be connected to the electrical supply. The gates were initially connected to the MC1 panelboard, which provided alternating current (AC) power. Framaco stated that “during the testing and commissioning phase of the security gates and barriers, it came to light that the sliding gates at MCAP lacked a UPS backup, although the barriers had one.” Appellant’s Opening Brief at 9. Sloan proposed connecting the sliding gates to the hydraulic power unit (HPU) panelboard, already servicing a wedge barrier, that had an uninterruptible power supply (UPS). Exhibit 171 at FRAM-1639553. Thereafter, Framaco disconnected the gate from the MC1 panelboard and reconnected it to the existing UPS-powered HPU panelboard, which provided power for the existing wedge barrier.

Framaco requests \$2238.70 in costs for having to undertake modifications to the surplus GFE materials to upgrade them to design requirements. Appellant’s Opening Brief at 9-10; Exhibit 177 at DOS-PTMO-03714753-54, -03714758. State contends that Framaco was not required to make use of the GFE from the previous contractor, and that State specifically disclaimed any warranty for surplus GFE. Respondent’s Reply Brief at 10; *see* Exhibit 205. State also argues that “Framaco failed to contact the [CO], or seek direction from an individual with authority to direct Framaco to perform work” outside the scope of the contract prior to executing the work at issue here. Respondent’s Initial Brief at 6.

The contract specification detailing the use of GFE specifically states:

This does not reflect a requirement that GFE Surplus Equipment and Material shall be used but as an indication that GFE Surplus Equipment and Material[] *may* be available for the indicated application.

Exhibit 2 at DOS-PTMO-00982418 (emphasis added).

Because Framaco was not required to use the available GFE, all arguments based on this assertion are untenable. That Framaco chose to use and then had to determine a path forward with the GFE, rather than procuring a gate, does not constitute a design change for which it can recover. Further, even assuming that the work done was outside the scope of the contract, Framaco failed to seek the CO’s approval prior to commencing the disputed work. Absent such approval, Framaco completed the work at its “own risk and *expense*.” Exhibit 1 at DOS-PTMO-00982375 (emphasis added). Therefore, the claim is denied.

Decision

The appeal is **GRANTED IN PART**. Framaco is entitled to recover only on its claim relating to the NOX Level 3 wood panel door. Otherwise, this 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