



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 SEPTEMBER 4, 2024**

DENIED: August 29, 2024

CBCA 7695

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 7695) arises from State’s denial of Framaco’s claim for \$68,636 for costs related to the installation of a lightning protection system (LPS), which required installation of bonding material between aluminum aerfoil sunshades and the carbon steel supporting structure (i.e., the steel trusses to which the sunshades were attached). For reasons stated below, 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. 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 including a lock-and-leave new office building, a perimeter security wall and

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

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) and annex (NOX), a marine service guard residence, a service entry/utility building, an enlarged support annex, and a new recreation facility. *Id.*

The contract's statement of work provided that the project was to be constructed in accordance with contract drawings and specifications. Exhibit 2 at DOS-PTMO-00982415. The issued-for-construction (IFC) drawing detailing the aerfoil sunshade required the use of dielectric separation tape between the aluminum sunshades and the carbon steel supporting structure. Exhibit 12; *see also* Appellant's Opening Brief at 3. According to State, "[t]he purpose of the dielectric separation tape was to prevent corrosion where aluminum and carbon steel surfaces were in contact." Respondent's Initial Brief at 2-3.

The contract included Section 264113, "Lightning Protection," which contained the following provisions:

### 1.3 SUBMITTALS

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- B. Shop Drawings: Detail lightning protection system, including air-terminal locations, conductor routing and connections, and bonding and grounding provisions. *Include* indications for use of raceway, data on how concealment requirements will be met, and *calculations required by [National Fire Protection Association (NFPA) 780, Standard for the Installation of Lightning Protection Systems,] for bonding of grounded and isolated metal bodies.*

....

### 1.5 COORDINATION

- A. *Coordinate installation of lightning protection with installation of other building systems and components, including electrical wiring, supporting structures and building materials, metal bodies requiring bonding to lightning protection components, and building finishes.*

....

### 3.1 INSTALLATION

- A. Install lightning protection components and systems according to NFPA 780.

Exhibit 8 at DOS-PTMO-KCCT-0051202, -0051204 (emphasis added).

The contract required Framaco to comply with the requirements of the 2011 edition of NFPA 780. Exhibit 11 n.1. Importantly here, this edition did not specify a bonding resistance maximum of 0.2 ohms. Instead, the 2011 edition stated, “Where metal bodies located within a steel-framed structure are inherently bonded to the structure through construction, separate bonding connections shall not be required.” Exhibit 184 at FRAM-1820352. The contract also included Section 107113 providing requirements for exterior sun control devices. Exhibit 7.

## II. The Parties’ Dispute

According to Framaco, “[t]he IFC drawings provided by the Government contained details for Framaco to follow in order to make sure the building had a continuous conductivity to protect from lightning.” Appellant’s Reply Brief at 1. It states that it “hired a professional LPS firm . . . to detail the LPS design provided by the Government and to provide the required shop drawings and materials for the LPS” which were subsequently approved by OBO. Exhibit 181 at DOS-PTMO-03106760; *see also* Appellant’s Opening Brief at 4-5. Framaco asserts that it completed this work consistent with State’s design but that the design failed. Exhibit 181 at DOS-PTMO-03106760.

Specifically, during construction, Framaco was faced with a problem regarding the structural integrity of the sunshades. Exhibit 176 at DOS-PTMO-03196706. Framaco asserts that State’s requirement to use “‘dielectric separation tape’ between the aluminum aerofoil sunshades and carbon steel trusses,” as contained in the IFC drawing detailing the aerofoil sunshade, was the source of the problem. Appellant’s Opening Brief at 3 (citing

Exhibit 12). Framaco argues that its position is supported by its inspector, who concluded that the cause of the bonding resistance problem was the dielectric separation tape required by the IFC drawings. *Id.* at 4-5. It asserts that “[a]fter initial tests and several follow up tests, the test result showed that the bonding resistance between NOX sunshade to LPS was greater than 0.2 ohms. The 3rd party inspector concluded that the **dielectric separation tape** was the source of the problem and a design issue.” *Id.* (citing Exhibit 176 at DOS-PTMO-03196706).

In its Initial Brief, State argues that “[t]he contract assigned ‘delegated design responsibility’ to Framaco” to design the LPS “and coordinate that system with the aluminum sunshade.” Respondent’s Initial Brief at 1. State argues that Framaco proposed a design that failed to meet all performance specifications. *Id.*

Additionally, State argues in its Initial Brief that Framaco failed to meet the NFPA 780’s requirement allowing for a maximum bonding resistance of 0.2 ohms between the sunshade and the LPS, and this was the reason for the required corrective action, not any design defect on State’s part. Respondent’s Initial Brief at 2. However, in its Reply Brief, State backs away from this argument, stating:

Framaco’s LPS inspector was applying the wrong version of NFPA 780 [i.e., apparently the 2020 version of this document rather than the 2011 edition], one that the contract did not require the building to meet. Framaco argues that the Government’s design was defective because it did not meet the requirements *of a standard that did not actually apply to the work*. The Government maintains that Framaco had design responsibilities that required it comply with applicable performance-based standards. Even if Framaco is right, however, that the Government was responsible for designing to meet the requirements of NFPA 780, the Government’s design was not defective because the alleged defect was premised on noncompliance with an inapplicable version of that standard.

Respondent’s Reply Brief at 1.

State also asserts that, based on Section 264113, “in combination with Framaco’s obligations with regard to grounded metal bodies under the LPS specification . . . , Framaco was responsible for making calculations to ensure that its sunshade connection design would meet the bonding resistance requirements for lightning protection.” Respondent’s Initial Brief at 2; *see also* Respondent’s Reply Brief at 2 (quoting Exhibit 8 at DOS-PTMO-KCCT-0051202). State avers that “Framaco . . . could have provided a different product with different electrical properties [than it did], and could have used more screws (and not

insulated the screws it did use) to provide more contact between the aerofoils and the trusses.” Respondent’s Reply Brief at 3-4. In short, State argues that the reasons why the LPS, as initially installed, failed, were due to the actions of Framaco, not those of State.

### Discussion

The contract required Framaco to follow the bonding requirements in the 2011 edition of the NFPA 780 and also to use dielectric separation tape between the aluminum sunshades and the carbon steel supporting structure. The 2011 edition of the NFPA 780 stated that, if electrical conductivity is inherent in the construction, additional bonding is not required. The logical inverse of this statement is that, if electrical conductivity between materials is not inherent in the construction, then additional bonding is necessary. The electrical conductivity between materials here was not inherent in the construction because of the dielectric separation tape. Additional bonding was therefore necessary, which was the extra work Framaco performed due to what its inspector flagged.

The fact that additional bonding was required because of the tape is not a design defect. The contract required Framaco to coordinate and build the sunshades (using dielectric separation tape), as well as install the LPS and adhere to the bonding requirements in the 2011 NFPA 780. Exhibits 7 (Section 107113 on sun control devices), 8 at DOS-PTMO-KCCT-0051202, -0051204 (Section 264113 on LPS requirements), 12 (IFC drawing). The problem, therefore, is not that State required dielectric separation tape, causing Framaco to provide additional bonding, but rather that Framaco did not initially provide the needed bonding that would have ensured a viable LPS at the outset.

Furthermore, contrary to Framaco’s argument, State’s approval of the shop drawings did not obviate the need for Framaco to comply with the contract terms, notably the 2011 NFPA 780. *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 initially failed to provide the bonding required for the LPS, and then had to correct its mistake, it was not entitled to additional money to provide a compliant system. *Id.*

Decision

The claim is **DENIED**.<sup>2</sup>

*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

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<sup>2</sup> Given our findings herein, we need not address the other arguments presented by the parties.