

FOUR REASONS WHY SPECIFICATIONS TAKE PRECEDENCE OVER DRAWINGS

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Most construction contractors understand that Federal Acquisition Regulation (“FAR”) 52.236-21, Specifications and Drawings for Construction, specifically states that “in case of difference between drawings and specifications, the specifications shall govern.” This clause is mandatory for use in fixed-price construction contracts over \$150,000. FAR 36.521. A recent construction contract not only included FAR 52.236-21, but three other clauses that similarly stated that the specifications took precedence over the drawings. *ATI TACOSE S.C.a R.L.* (“TACOSE”), ASBCA Nos 59157, 59200, January 4, 2017. These clauses related to two claims for constructive changes by the government.

The Navy awarded a contract to TACOSE to design and build a dormitory at Aviano Air Base in Italy. The solicitation did not include a finished design, but rather, a package setting forth minimum requirements, including specifications and drawings. TACOSE was required to design and construct the dormitory in accordance with these requirements.

TACOSE submitted two claims:

- (1) To add 144 “mass notification system speakers” to the Life Safety notification systems, one in each sleeping room. TACOSE contended that the drawings only showed speakers in the common rooms, but *not* in the 144 sleeping rooms.
- (2) For the additional cost of a perimeter waterproofing membrane and insulation under the ground floor membrane, a feature required by Italian and European building codes.

The contract required compliance with all applicable building codes, even if these codes were not expressly listed in the contract. In addition the contract incorporated by reference the U.S. Department of Defense “Unified Facilities Criteria” used for DOD facilities.

In order to resolve discrepancies between specifications and drawings, the contract included the following:

- (1) FAR 52.236-21, discussed above
- (2) Naval Facilities Acq. Supplement 5252.236-9312, Design Build Contract-Order of Precedence, which showed that specifications took precedence over concept drawings.
- (3) General requirements, which stated “in case of differences between project specifications and the accompanying drawings, the specifications will govern.”
- (4) DOD FAR Supplement (“DFARS”) 252.236-7001, Contract Drawings and Specifications, which states that “omissions from drawings or specifications or misdescription of details of work that are manifestly necessary to carry out the intent of the drawings and specifications, or that are customarily performed, shall not relieve the contractor from performing such omitted or misdescribed details of the work.”

TACOSE asserted that the drawings in the solicitation showed speakers were required only in common rooms and not all the sleeping rooms. The Board reiterated the frequently stated

principle that a contract must be read as a whole, giving meaning to all its parts, including the order of precedence clauses. The Board held that these four provisions made it abundantly clear that not only the DOD Unified Facilities Criteria required speakers in all 144 sleeping rooms, and the “Fire Protection” section of the specifications also required such speakers.

As for the insulation issue, specific insulation requirements were not prescribed in the body of the contract. However, the contract incorporated building codes and similar standards into the contract specifications, and directed the contractor to follow all applicable Italian and European codes and standards for each product and installation required. The Board held that compliance with Italian standards was therefore required, and both the waterproofing membrane and insulation under the ground floor membrane were called out by the Italian standards.

Both of TACOSE’s claims were denied by the Board.

Takeaway: Especially in construction contracts (even design-build construction contracts), the contractor must pay close attention to order of precedence clauses, and all clauses or specifications that are incorporated by reference. Merely consulting the drawings is not sufficient.