

CONTRACTING OFFICER’S REPRESENTATIVE CANNOT BIND AGENCY

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In a construction case, the Civilian Board of Contract Appeals (“CBCA”) reminds us that specifications take precedence over drawings and that a Contracting Officer’s Representative (“COR”) has no authority to change the contract, including making a modification of the specifications. *Framaco Int’l, Inc.*, CBCA 7573, July 25, 2024.

Framaco was awarded a firm-fixed price contract from the Department of State to construct an embassy compound in Port Moresby, Papua, New Guinea. The contract included Federal Acquisition Regulation (“FAR”) 52.236-21, Specifications and Drawings. This provision included the like effect clause (“anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both”). The clause also states that if there is a difference between the drawings and specifications, the specifications shall govern.

The contract specifications concerning “fire rated” panels was at issue. During its installation of materials, Framaco asked the State Department’s COR (who was also the Project Director) if certain rooms needed to be “fire rated” since there were no plywood backing panels for equipment in those rooms. The COR advised that the plywood [in such rooms] need not be fire rated unless it was specifically called out as fire rated. Framaco used non-fire rated plywood on the project, but the State Department determined subsequently that the installed non-fire rated plywood was not compliant with the contract requirements. Framaco eventually installed fire-rated plywood, but filed a claim for \$99,999 to compensate what it alleged was a government-directed change to install the plywood.

The CBCA denied the appeal based on the contract language, noting that non-fire-retardant treated wood was not among the materials permitted for construction of the type of building at issue here. To the extent there was a discrepancy between drawings and specifications, the CBCA noted that it was clear that specifications took precedence over the drawings. And finally, the CBCA rejected Framaco’s argument concerning its communication with the COR about the need for fire rated wood. The CBCA noted that the COR had no authority to change the contract, including modifying the specifications—only contracting officers have such authority to execute modifications on behalf of the government. The CBCA denied the claim in its entirety.

Takeaway. Never accept a contract interpretation from a COR unless that interpretation has been concurred in, in writing, by the CO. Use email to force the CO to take a position before you rely on the COR’s interpretation.

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