

ASBCA Decision Addresses Owner and Design-Builder Responsibilities on Federal Construction Projects

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In *Appeals of Meltech Corporation, Inc.*, ASBCA Nos. 61766, 61767, and 61872 (July 16, 2025), the Armed Services Board of Contract Appeals (ASBCA/Board) resolved three separate disputes arising from a US Army Corps of Engineers (USACE or owner) renovation project delivered through the design build method. The ASBCA Board's decision focused on and further defines the allocation of risk between an owner and a design builder on these types of projects.

Background

The Meltech case involved a USACE Multiple Award Task Order Contract which included both design-build and design-bid-build components associated with the renovation of Building 8609, a roughly 39,000-square-foot, 1950s-era barracks located at Fort Meade, Maryland (Projector Building). In 2014 USACE awarded Meltech the base contract and issued a task order for the Building with a 540-day performance period beginning with the November 17, 2014 Notice to Proceed. The ASBCA Board considered three discrete issues which arose during Project development, those issues involved emergency lighting, heat trace, and day room shelving. The ASBCA Board's decisions regarding these three issues are discussed below.

Emergency Lighting

The first issue concerned emergency egress lighting. The contract required compliance with NFPA 101, mandating a minimum of 10 lux with 90 minutes of battery backup. In December 2017, a Fort Meade fire inspector tested the system which had been installed and the lighting system failed on multiple fronts: insufficient light output, batteries that didn't last the full cycle, and standard fixtures installed where emergency fixtures were required. Meltech addressed these issues and then sought a constructive change order, on the basis that the owner had approved its drawings and that the inspector's testing methods (using a phone app rather than a calibrated meter) were unreliable.

In considering this issue the ASBCA Board held that the owner was entitled to strict compliance with the contract's life-safety specifications regardless of prior design approval. In reaching this decision, the ASBCA Board relied on two FAR clauses: the architect-Engineer clause (FAR 52.236-23)¹, which places responsibility for design accuracy on the contractor notwithstanding government review, and the Inspection of Construction clause (FAR 52.246-12)², which obligates the contractor to maintain its own inspection system and correct nonconforming work at its own expense. The ASBCA Board held that because this was a firm-fixed-price design-build contract, Meltech bore the risk associated with compliance with contractual requirements and that in this situation Meltech could not shift the cost of achieving code compliance to the owner.

Heat Trace: A Type I Differing Site Condition

The second issue considered by the ASBCA Board involved the owner's contract documents. In order to convert

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communal bathrooms into private bathrooms, Meltech needed to run water piping above a first-floor corridor ceiling. In connection with this conversion, Meltech relied on RFP Drawings provided by the owner that depicted girders being interrupted at the corridor with uniform column heights providing clearance. After demolition was completed, Meltech discovered that there were girders running continuously across the corridor, with four columns sitting six to eight inches lower than as depicted in the RFP Drawings. As a result, the water piping had to be routed through an unheated crawl space which required the installation of a heat-trace system, at a claimed cost of \$130,134. Meltech sought to recover these additional costs from the owner based on its (Meltech) encountering an as built condition that was not depicted in the RFP documents. During discovery a USACE engineer conceded that omitting a detailed view of the girder variances was “human error.” The ASBCA Board found Meltech was able to satisfy the four elements of a Type I differing site condition³: the contract documents affirmatively misrepresented conditions, the discrepancy was unforeseeable (a one-hour guided walkthrough of an occupied building with no ceiling access would not have revealed it), Meltech reasonably relied on the drawings in pricing its bid, and Meltech suffered resulting damages. Because the discrepancy did not involve any conduct by Meltech and was based on the owner’s own drawings, the ASBCA Board found that Meltech was entitled to recover these additional costs.

Day Room Shelving

The third issue which was considered by the ASBCA Board was, in the ASBCA’s words, possibly one of first impressions. The owner’s RFP specified the use of plastic laminate for the building’s day room shelving. Meltech’s 100% design submittal mistakenly called for the installation of higher-quality and more expensive shelving, quarter-slice white oak veneer. USACE subsequently took a unilateral \$16,447 credit against costs otherwise owed to Meltech, insisting that Meltech’s 100% design was a binding contract document and that Meltech had unilaterally incurred additional costs by specifying the higher quality/more expensive shelving.

The ASBCA Board rejected the owner’s argument, emphasizing that the owner bears the burden of proving both entitlement to a deductive change and an actual cost savings. The ASBCA Board distinguished what had occurred on this Project from the more typical scenario, where a contractor mistakenly specifies something which is below the RFP requirement and the owner properly demands that the contractor comply with the RFP and supply the required material. In this case Meltech’s submittal called for the installation of a material which exceeded the RFP baseline requirement, and Meltech ultimately delivered exactly what the RFP specified. Since there was no cost savings to Meltech and no corresponding loss to the owner, the ASBCA Board found that USACE had no basis for a credit, and sustained this portion of the appeal.

Conclusions

The three rulings offer a practical roadmap of where design compliance with RFP requirements and differing site-condition risk falls on federal design-build projects. Design builders remain responsible for the accuracy and code-compliance of their own designs, and owner review or approval of these submittals does not excuse or otherwise relieve the design builder of that responsibility, as the lighting issue illustrates. However, the owner cannot misrepresent site conditions in its RFP materials and then disclaim responsibility for the consequences which arise from those differing site conditions when design-builders reasonably rely on them, as the heat-trace ruling shows. Finding a deductive credit requires the owner to demonstrate genuine cost savings or lost value, meaning it cannot manufacture a credit from a design-builder’s drafting error, as the shelving dispute confirms.

¹FAR 52.236-23

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(a) The contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the contractor under this contract. The contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.

(b) Neither the Government's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the contractor shall be and remain liable to the Government in accordance with applicable law for all damages to the Government caused by the contractor's negligent performance of any of the services furnished under this contract.

²FAR 52.246-12

(b) The contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the contracting officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

³The four elements for a Type 1 differing site condition, are (1) the condition indicated in the contract differs materially from those actually encountered during performance; (2) the conditions actually encountered were reasonably unforeseeable based on all information available to the contractor at the time of bidding; (3) the contractor reasonably relied upon its interpretation of the contract and contract-related documents; and (4) the contractor was damaged as a result of the material variation between expected and encountered conditions.