

The Spearin Doctrine and Design-Build

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Legal Pipeline

The Spearin Doctrine and Design-Build

Applying a 100-year-old rule to the latest project delivery system.

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No Comments



In one of the most well-known construction cases in contracting law, the United States Supreme Court held that an owner impliedly warrants design specifications that it provides to a contractor. *United States v. Spearin*, 248 U.S. 132 (1918). Contractors in various jurisdictions have successfully made claims – in the context of both private and government contracts – for an equitable adjustment (i.e.,

additional time and/or money) predicated on what has come to be known as the "Spearin Doctrine." As the Supreme Court explained, "[If] the contractor is bound to build according to plans and specifications prepared by the owner, the contractor will not be responsible for the consequences of defects in the plans and specifications." *Spearin*, 248 U.S. at 136. The vast majority of *Spearin* claims have been asserted in design-bid-build projects. *Spearin* claims are far less common in design-build projects – the focus of this month's column.

Definition of Design-Build

The most complete definition of "design-build" comes from the Design-Build Institute of America, which does an excellent job of distinguishing it from the traditional "design-bid-build" project delivery system:

"Design-build is a method of project delivery in which one entity – the design-build team – works under a single contract with the project owner to provide design and construction services. One entity, one contract, one unified flow of work from initial concept through completion – thereby re-integrating the roles of designer and constructor. Design-build is an alternative to the traditional design-bid-build project delivery method. Under the latter approach, design and construction services are split into separate entities, separate contracts, separate work."

In the recent case of *United States ex rel. Bonita Pipeline, Inc. v. Balfour Beatty Construction, LLC*, No. 3:16-CV-00983-H-AGS, 2017 WL 2869721 (S.D. Calif. May 19, 2017), a federal court in California considered the application of *Spearin* to a design-build project.

Balfour Beatty was awarded a \$35-million, design-build contract with the Naval Facilities Engineering Command Southwest to design and construct a hangar replacement at Camp Pendleton. Balfour Beatty provided its subcontractor, Bonita with design documents so that Bonita could bid on one of the project's subcontracts. The design documents specifically noted that they were "incomplete" when they were provided to Bonita – a frequent occurrence in design-build projects.

Bonita and Balfour Beatty eventually entered into a \$4.7 million subcontract under which Bonita agreed to design-build structural steel, metal decking and other work. The subcontract also expressly provided that due to the design-build nature of the project, the plans and specifications were subject to further refinement. Numerous disputes arose during the course of the project, culminating in a lawsuit by Bonita for additional compensation due to alleged design errors and changes.

Application of Spearin to Design-Build

Bonita promptly moved for partial summary judgment, asking the Court to declare that Balfour Beatty, as contractor, cannot shift legal responsibility for defective plans and specifications onto its subcontractor Bonita, as a matter of law. In other words, Bonita based its motion on *Spearin* and the line of cases following the doctrine.

Balfour Beatty argued that *Spearin* does not apply to this project because the subcontract explicitly indicates that this is a design-build project, and the plans and specifications were expressly incomplete when the initial agreements were signed. "Thus, according to [Balfour Beatty], the *Spearin* doctrine cannot be applied to the Subcontract because, by the very nature of the contract, the plans were not complete when the parties reached agreement." *Bonita Pipeline*, 2017 WL 2869721, at *3.

Bonita replied that it assumed the risk that the plans and specifications would be refined – not the risk that they would be defective. Bonita also argued that the *Spearin* doctrine addresses whether plans are correct; not whether they are complete. *Bonita Pipeline*, 2017 WL 2869721, at *3.

The District Court ultimately denied the motion for partial summary judgment, finding the issue of whether *Spearin* applies in this particular case to be premature based on the facts in the record.

The Court noted that as a general proposition, *Spearin* may apply to design-build projects. *Bonita Pipeline*, 2017 WL 2869721, at *4; see also *AAB Joint Venture v. United States*, 75 Fed. Cl. 414 (2007); *Drennon Constr. & Consulting, Inc. v. Dept. of Interior*, 13 B.C.A. (CCH) ¶ 35,213 (Jan. 4, 2013). "Under *Spearin*, the responsibility to provide correct plans and specifications 'is not overcome by the general clauses requiring the contractor, to examine the site, to check up the plans, and to assume responsibility for the work.'" *Bonita Pipeline*, 2017 WL 2869721, at *4; see also *Coghlin Elec. Contractors, Inc. v. Gilbane Bldg. Co.*, 36 N.E.3d 505 (Mass. 2015) (applying *Spearin* to a construction manager at risk project).

However, on the facts before it, the Court was not able to discern whether Bonita's extra work was due to errors in the plans and specifications or whether the extra work was due to expected design refinements as set forth in the parties' subcontract.

Takeaways

Although the issue of design-build and *Spearin* remains unsettled, courts are beginning to grapple with the doctrine and the nuances of design-build projects. Regardless of the project delivery type, if a contractor receives defective plans and specifications from an owner (or prime contractor), *Spearin* is usually the first thing that comes to mind. A contractor with a prospective *Spearin* claim needs to remember that there are a number of important limitations on the application of the doctrine in all kinds of projects.

First, the doctrine only applies to design specifications; not performance specifications. See *Fru-Con Constr. Corp. v. United States*, 42 Fed. Cl. 94 (1998) (finding no implied warranty by the government, who issued performance specifications). Second, in order for a *Spearin* claim to lie, the contractor has to "reasonably rely" on the defective design plans. See *Coghlin*, 36 N.E.3d at 514. Third, a contractor has to actually follow the defective design plans. See *A1 Johnson Constr. Co. v. United States*, 854 F.2d 467, 470 (Fed. Cir. 1988) (rejecting *Spearin* claim where contractor did not comply with the design plans that it alleged were defective). Finally, the defects in the plans and specifications need to be material as opposed to minor. See *Wunderlich Contracting Co. v. United States*, 351 F.2d 956, 959-60 (Ct. Cl. 1965).

While entire seminars and law school classes could be devoted to design-build contracts, the *Spearin* doctrine and/or any of its exceptions, you at least now have an overview of these important concepts and their ramifications to contractors on a project.

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