

ARMED SERVICES BOARD OF CONTRACT APPEALS

First Street Contractors, LLC

ASBCA No. 64028 · No. ASBCA No. 64028 · Decided February 20, 2026

SUMMARY

The Armed Services Board of Contract Appeals considered the parties’ cross-motions for summary judgment in First Street Contractors, LLC’s appeal concerning a Corps of Engineers wastewater-treatment-equipment contract. The appeal involves claims relating to differing site conditions for concrete floor openings, glass-lined valves, and temporary grit-pump watch services. The Board denied summary judgment on the claims because genuine issues of material fact remained regarding contract interpretation, foreseeability, and whether the directed work exceeded the contract requirements.

CASE DETAILS

COURT	Armed Services Board of Contract Appeals
WRITING FOR THE COURT	James R. Sweet; Owen C. Wilson; J. Reid Prouty
JURISDICTION	Armed Services Board of Contract Appeals
DECIDED	February 20, 2026
DOCKET	ASBCA No. 64028
DISPOSITION	other
PROCEDURAL POSTURE	Contract appeal from a contracting officer's final decision denying certified claims. The parties filed cross-motions for summary judgment on claims involving concrete floor openings, glass-lined valves, and temporary grit-pump watch services.
STANDARD OF REVIEW	Summary judgment is granted only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. The Board applies Federal Rule of Civil Procedure 56 for guidance, resolves significant factual doubts and reasonable inferences in favor of the nonmovant, and does not weigh evidence or make credibility determinations.
PRECEDENTIAL VALUE	Published Armed Services Board of Contract Appeals opinion; precedential status identified in the supplied metadata as Published.
PARTIES	First Street Contractors, LLC v. United States

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether either party was entitled to summary judgment on First Street's Type I differing-site-condition claim concerning the size of the existing concrete-floor openings.
2. Whether either party was entitled to summary judgment on the constructive-change claim concerning the Corps' requirement that valves larger than three inches be glass lined.
3. Whether either party was entitled to summary judgment on the constructive-change claim concerning continuous watch services for a temporary grit pump.

HOLDINGS

1. Neither party was entitled to summary judgment because genuine issues of material fact existed as to whether First Street reasonably interpreted and relied on the contract's indication that the concrete-floor openings were larger than the grit pumps and whether the smaller openings were reasonably unforeseeable based on all information available at bidding.
2. Neither party was entitled to summary judgment because the contract was ambiguous as to whether valves larger than three inches had to be glass lined, and a factual dispute existed concerning whether extrinsic evidence showed that the parties intended such a requirement.
3. Neither party was entitled to summary judgment because a genuine issue of material fact existed as to whether the permanent grit pumps being out of service affected the treatment process, thereby bringing continuous temporary-pump watch services within the contract's continuous-work requirement.

KEY QUOTATIONS

"We will grant summary judgment only if there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law." (5)

"In order to establish a Type I differing site condition claim, a contractor must prove that: (1) the contract contained a positive indication of the conditions at the site; (2) the contractor reasonably interpreted and relied upon the indicated site conditions; (3) the conditions encountered were materially different from those indicated; (4) the conditions encountered were reasonably unforeseeable based upon all the information available at the time of bidding; and (5) the contractor's injury was caused solely by the differing site condition." (6)

"In order to demonstrate a constructive change, a [contractor] must show that: (1) it performed work beyond the contract requirements (Change Element); and (2) the government ordered, expressly or impliedly, the additional work (Order Element)." (13)

FACTUAL BACKGROUND

The Corps contracted with First Street to replace grit-dewatering equipment at the Gary Sanitary District wastewater treatment plant. First Street alleged that the contract drawings indicated that existing concrete-floor openings were larger than the pumps, that the contract required glass-lined valves larger than three inches only through a constructive change, and that the Corps improperly required continuous watch services for a temporary grit pump. The Board found factual disputes concerning reliance and foreseeability for the differing-site-condition claim, the interpretation of an ambiguous valve specification and related extrinsic evidence, and whether the temporary pump's operation affected the treatment process.

PROCEDURAL HISTORY

The Corps awarded First Street a contract to replace grit-dewatering equipment at a wastewater treatment plant. First Street submitted a certified claim on June 20, 2024, and the contracting officer denied it in a final decision dated September 16, 2024. First Street appealed to the Board, and the parties filed cross-motions for summary judgment. The Board denied both parties' motions on all three claims because genuine issues of material fact remained.

DISPOSITION

other

CASES CITED

- Meridian Eng'g Co. v. United States, 885 F.3d 1351, 1361 (Fed. Cir. 2018)
- Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986)
- Mingus Constructors, Inc. v. United States, 812 F.2d 1387, 1390 (Fed. Cir. 1987)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986)
- C. Sanchez & Son, Inc. v. United States, 6 F.3d 1539, 1541 (Fed. Cir. 1993)
- Colonna's Shipyard, Inc., ASBCA No. 59987 et al., 16-1 BCA 36,518 at 177,902
- Pure Gold, Inc. v. Syntex (U.S.A.), Inc., 739 F.2d 624, 626-27 (Fed. Cir. 1984)
- David Boland, Inc., ASBCA No. 61923 et al., 21-1 BCA 37,822 at 183,656
- H.B. Mac, Inc. v. United States, 153 F.3d 1338, 1345 (Fed. Cir. 1998)
- Comtrol Inc. v. United States, 294 F.3d 1357, 1363 (Fed. Cir. 2002)
- Nova Grp., Inc., ASBCA No. 55408, 10-2 BCA 34,533 at 170,321
- Pacific Alaska Contractors v. United States, 436 F.2d 461, 469 (Ct. Cl. 1971)
- Randa/Madison Joint Venture III, ASBCA No. 49452, 99-2 BCA 30,553 at 150,877
- Foster Constr. C.A. & Williams Bros. Co. v. United States, 435 F.2d 873, 881 (Ct. Cl. 1970)
- CDM Constructors, Inc., ASBCA No. 60454 et al., 18-1 BCA 37,190 at 181,012
- Coast Fed. Bank, FSB v. United States, 323 F.3d 1035, 1040 (Fed. Cir. 2003) (en banc)
- E.L. Hamm & Assocs., Inc. v. England, 379 F.3d 1334, 1341 (Fed. Cir. 2004)
- NVT Techs., Inc. v. United States, 370 F.3d 1153, 1159 (Fed. Cir. 2004)

- Hol-Gar Mfg. Corp. v. United States, 351 F.2d 972, 975 (Ct. Cl. 1965)
- Cook v. Principi, 318 F.3d 1334, 1339 n.8 (Fed. Cir. 2002)
- Symvionics, Inc., ASBCA No. 60335, 17-1 BCA 36,790 at 179,323
- R.L. Persons, 18-1 BCA 37,007 at 180,236-37
- Varilease Tech. Group, Inc. v. United States, 289 F.3d 795, 798 (Fed. Cir. 2002)
- Gevyn Constr. Corp. v. United States, No. 158-74, 1979 WL 16487, at *30-31 (Ct. Cl. Mar. 16, 1979)
- Thalle Constr. Co., ASBCA No. 63685 et al., 25-1 BCA 38,892 at 189,310
- Bell/Heery v. United States, 739 F.3d 1324, 1335 (Fed. Cir. 2014)
- JAAAT Tech. Servs., LLC, ASBCA No. 62373, 22-1 BCA 38,086 at 184,964
- Gen. Dynamics-Nat'l Steel and Shipbuilding Co., ASBCA No. 61524, 22-1 BCA 38,067 at 184,823
- Gen. Dynamics-Nat'l Steel and Shipbuilding Co., ASBCA No. 61524, 19-1 BCA 37,291 at 181,417
- Beta Sys., Inc. v. United States, 838 F.2d 1179, 1183 (Fed. Cir. 1988)
- Turner Constr. Co., Inc. v. United States, 367 F.3d 1319, 1321 (Fed. Cir. 2004)
- Sauer Constr., LLC, ASBCA No. 63738, 25-1 BCA 38,744 at 188,345