LiRo Program & Construction Management, PE P.C. (o/b/o Navesink Prestige LLC) v. Dep't of Design & Construction

OATH Index Nos. 1426/24 & 1427/24, mem. dec. (June 24, 2026)

Subcontractor challenged DDC's recoupment of previously issued mobilization payments and assessment of credits for the alleged non-performance of line-item work. The Board denied the subcontractor's claim for mobilization payments, finding that it is time-barred and that the subcontractor failed to substantiate its costs. The Board granted subcontractor's claim in part with respect to certain line item work but denied relief for work that was not completed in accordance with contract documents.

New York City Office of
Administrative Trials and Hearings

Contract Dispute Resolution Board

In the Matter of

LiRo Program & Construction Management,
PE P.C. on behalf of
Navesink Prestige LLC
Petitioner
-against-
Department of Design and Construction
Respondent

Memorandum Decision

Hanchun Lin, *Administrative Law Judge/Chair*

Jessica Lu, Esq., *Mayor's Office of Contract Services*

Charles Kass, Esq., *Pre-qualified Panel Member*

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Pending before the Contract Dispute Resolution Board ("Board") are two consolidated petitions filed by LiRo Program and Construction Management, PE P.C. ("LiRo") on behalf of its subcontractor, Navesink Prestige LLC ("Navesink"),[1] against the City of New York Department of Design and Construction ("DDC") concerning disputes arising out of a contract for construction and construction management services associated with the rehabilitation, elevation, and reconstruction of homes damaged by Hurricane Sandy.

In 2012, Hurricane Sandy hit New York City, destroying and damaging thousands of private residential buildings. In response, the City developed the "Build It Back" program to rehabilitate damaged homes, elevate homes for protection against future storms, and demolish and reconstruct homes that had been substantially destroyed. Under this program, DDC entered into Contract No. 20151424707 ("Prime Contract") with LiRo, registered on June 17, 2015, for design, construction, and management services, in the total amount of $275,530,566. LiRo subsequently subcontracted with Navesink for general construction work.

On November 13, 2023, Navesink filed two petitions with the Board. The first petition, entitled "Mobilization Petition" ("Mob. Pet.") and assigned OATH index number 1426/24, challenged DDC's deduction of $1,161,588.26 representing payments that had been previously made to Navesink as mobilization costs on several homes. The second petition, entitled "Forced Credit Petition" ("FC Pet.") and assigned OATH index number 1427/24, challenged DDC's imposition of five forced credits relating to work performed at 14 Merit Court, Brooklyn, New York. Specifically, DDC assessed credits against Navesink for five line items of work allegedly not performed: 1) general labor; 2) temporary toilets; 3) temporary power via overhead hook up; 4) pumping of standing water with a truck-mounted pump; and 5) missing set of stairs.

On March 7, 2025, DDC filed a response to the Mobilization Petition ("Mob. Resp.") and a response to the Forced Credit Petition ("FC Resp."). On June 20, 2025, Navesink filed a reply for the Mobilization Petition ("Mob. Reply") and a reply for the Forced Credit Petition ("FC Reply").

[1] Although the petitions were filed by the attorneys for Navesink, the contractor is identified as LiRo filing on behalf of Navesink (Mob. Pet. at 1; FC Pet. at 1-2).

On May 6, 2026, an oral argument was held via videoconference. The record was held open until May 8, 2026, for Navesink to submit, at the Board's request, a table of contents for one of its exhibits, Exhibit D to the Mobilization Petition, which consisted of 616 unnumbered pages. On May 8, 2026, Navesink submitted the table of contents (ALJ Ex. 1). Navesink also submitted ten additional pages to Exhibit D that had been inadvertently omitted from the initial submission (ALJ Ex. 2).

For the reasons explained below, the Board denies the Mobilization Petition in full and grants the Forced Credit Petition in part.

Background

Mobilization Petition

In July 2016, LiRo subcontracted with Navesink to reconstruct homes that had been damaged by Hurricane Sandy (Mob. Resp., Ex. 2) ("Mob. Subcontract"). Under this subcontract, Navesink was assigned 22 homes for reconstruction.

Pursuant to Article 42.2.3 of the Prime Contract between DDC and LiRo, "[p]ayments for Construction shall be invoiced" according to project milestones. As relevant here, ten percent of the construction value is billed upon reaching the milestone for mobilization. In 2017, DDC issued mobilization payments for 12 homes,[2] which totaled $1,161,588.26 (Mob. Resp. at 3-4; Mob. Resp., Ex. 3). In late 2017 and early 2018, DDC omitted these homes from Navesink's portfolio and issued stop work orders for each home (Mob. Resp. at 3-4; Mob. Resp., Ex. 3).

On February 5, 2021, DDC, through LiRo, deducted $1,161,588.26 from its payment to Navesink (Mob. Resp., Ex. 3; Mob. Pet., Ex. A). On February 26, 2021, Navesink submitted a Notice of Dispute ("NOD") to LiRo (Mob. Pet. at 10; Mob. Pet., Ex. A)[3]. On March 30, 2021, LiRo

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[2] The 12 homes are APP-003058, 25 Brighton 7 Court; APP-004468, 2833 West 17 Street; APP-006333, 40 Gotham Avenue; APP-008061, 3153 Shore Parkway; APP-008382, 1117 Blake Court; APP-008540, 24 Lincoln Terrace; APP-009155, 31 Lincoln Terrace; APP-012803 10218 Avenue L; APP-014710, 26 Lincoln Terrace; APP-017625, 32 Lincoln Terrace; APP-017713, 27 Lincoln Terrace; and APP-025851, 3 Lake Avenue (Mob. Resp. at 3-4).

[3] The Mobilization Petition asserts that "Navesink submitted its NOD to LiRo on February 26th, 2018 at 10:24 AM" (Mob. Pet. at 10). "2018" appears to be a typographical error as there is no dispute that the NOD was submitted in 2021.

submitted the NOD on Navesink's behalf to DDC (Mob. Resp., Ex. 6). In the NOD, Navesink contended that it was entitled to $1,161,588.26 because it had met the mobilization milestones for 11 homes and incurred administrative costs in the process (Mob. Pet., Ex. A). On May 11, 2021, DDC denied Navesink's claim on grounds that the NOD was untimely filed, that Navesink did not physically mobilize on the homes or perform significant pre-construction work, and that Navesink could not produce documentation of its expenses (Mob. Pet., Ex. B).

On June 10, 2021, Navesink filed a Notice of Claim ("NOC") with the Office of the Comptroller (Mob. Pet. at 2; Mob. Pet., Ex. C). On August 7, 2023, the Office of the Comptroller denied the NOC (Mob. Pet., Ex. E).

Forced Credit Petition

14 Merit Court is a two-story residence located in Brooklyn, New York, that had been damaged by Hurricane Sandy (FC Resp., Ex. 3). As part of the Build It Back program, an Estimated Cost of Repair ("ECR") was developed, identifying the scope of work necessary to restore the property and providing a corresponding cost value for each line item of work (*Id.*). As relevant here, the ECR contained the following five line items: 1) Item No. 156, "General Laborer – per hour," totaling $4,125.12, calculated at $42.97 per hour for 96 hours; 2) Item No. 158, "Temporary toilet (per month)," totaling $570.12, calculated at $190.04 per month for 3 months; 3) Item No. 159, "Temporary power – overhead hookup," totaling $530.71; 4) Item No. 183, "Pumping of standing water – truck mounted (per hour)," totaling $15,303.60, calculated at $212.55 per hour for 72 hours; and 5) Item No. 196, "Missing set of stairs," totaling $6,549.54 (*Id.* at 19, 22, 24). Together, these five line items total $27,079.09, and they are subject to a 2.99 bid multiplier, resulting in a total adjusted value of $80,966.48 (FC Pet. at 2; FC Pet., Ex. A at 133).

In September 2015, Navesink and LiRo entered into a subcontract for performance of general construction work (FC Resp., Ex. 2) ("FC Subcontract"). Pursuant to that subcontract, Navesink performed work at 14 Merit Court. On September 22, 2020, LiRo, at DDC's direction, issued a change order taking credits against Navesink for "uninstalled quantities, incorrect line items used, [and] general conditions items," including the five line items in dispute (FC Pet., Ex. A at 122, 128).

On October 22, 2020, Navesink filed an NOD disputing the forced credit change order (FC Pet., Ex. A). On January 4, 2021, Navesink, having received no response from DDC, filed an NOC with the Office of the Comptroller (FC Pet. at 3; FC Pet., Ex. B). On February 19, 2021, DDC denied Navesink's claim (FC Pet., Ex. C). On August 7, 2023, the Office of the Comptroller denied Navesink's NOC (FC Pet., Ex. J).

Analysis

The Board's authority to resolve contract disputes between the City and a contractor is derived from the Procurement Policy Board Rules ("PPB Rules") and Article 29 of the Prime Contract. Although not a party to the Prime Contract, Navesink's subcontracts with LiRo expressly incorporate the same dispute resolution procedures governing claims under the Prime Contract. *See* Mob. Subcontract Art. 1.4 ("Subcontractor shall be bound to the [prime contractor] in the same manner and to the same extent that the [prime contractor] is bound to [DDC] in the Prime Agreement, including any alternate dispute resolution rules and procedures set forth in the Prime Agreement."); FC Subcontract Art. 1.4 (same).

The Board is empowered to hear "disputes about the scope of work delineated by the contract, the interpretation of contract documents, the amount to be paid for extra work or disputed work performed in connection with the contract, the conformity of the vendor's work to the contract, and the acceptability and quality of the vendor's work." 9 RCNY § 4-09(a)(2) (Lexis 2026); Prime Contract Art. 29(1)(b). The Board's "decision must be consistent with the terms of the contract." 9 RCNY § 4-09(g)(4).

The Mobilization Petition is time-barred

Pursuant to the Prime Contract and PPB Rules, the contractor must submit an NOD "to the Commissioner within thirty (30) days of receiving written notice of the determination or action that is the subject of the dispute." Prime Contract Art. 29(4)(a); 9 RCNY § 4-09(d)(1). An untimely NOD renders the claim time-barred. *Matter of Commodore Construction Corp. v Contract Dispute Resolution Bd. of the City of New York*, 161 A.D.3d 548 (1st Dep't 2018); *Unionport Constructors JV. v. Dep't of Transportation*, OATH Index No. 0027/22, mem. dec. at 4, 6 (Aug. 22, 2022), *aff'd*, 2024 N.Y. Misc. LEXIS 2150 (Sup. Ct. N.Y. Co. May 9, 2024). The window for filing an NOD is triggered by a final and unambiguous agency determination. *See Triton Structural Concrete, Inc. v. Dep't of Design & Construction*, OATH Index No. 1184/15, mem. dec. at 5 (June 17, 2015) ("The Board has held that a letter from a person with agency authority who unambiguously denies a contractor's request is a determination that triggers the 30-day period to file a Notice of Dispute."); *Maracap Construction Industries, Inc. v. Dep't of Transportation*, OATH Index No. 711/08, mem. dec. at 5 (May 9, 2008) ("The statutory period for challenging a determination commences when unambiguous notification is issued.").

Where, as here, the dispute is initiated by a subcontractor lacking contractual privity with the agency, the NOD must be submitted through the prime contractor. Prime Contract Art. 10.2.3(g)(1), (4) ("[D]isputes submitted by a Subcontractor to the Contractor must be submitted by the Contractor to the City for resolution in accordance with Article 29 . . . . [T]he Subcontractor agrees that it has no right to submit a dispute to the City"). Accordingly, for purposes of determining the timeliness of the NOD, the operative date is March 30, 2021, when LiRo submitted the NOD to DDC, rather than the date on which Navesink submitted its dispute to LiRo. *See Turner/STV, a Joint Venture (o/b/o Federated Fire Protection Systems Corp.) v. Dep't of Design & Construction*, OATH Index No. 754/21, mem. dec. at 7-8 (Mar. 8, 2023) ("The Board has dismissed claims as time barred where a prime contractor submitted an untimely claim even where the subcontractor had submitted a timely claim itself, which was rejected for lack of privity."); *see also Hill International, Inc., on behalf of Plaza Construction LLC v. Dep't of Design & Construction*, OATH Index No. 613/16, mem. dec. at 5 (Feb. 16, 2016) ("Past Board cases have held that, where the prime contractor fails to meet a time deadline imposed by the PPB rules for submission of a claim on behalf of a subcontractor, that failure is not excused because the subcontractor was not notified of a decision."); *LiRo/HAKS, J.V. v. Dep't of Design & Construction*, OATH Index No. 1614/15, mem. dec. at 5 (Jan. 21, 2016) ("In past cases, subcontractors' claims have been denied as untimely where the prime contractor failed to submit the claim to the Comptroller within 30 days, even though a subcontractor submitted a timely claim which was rejected.").

Navesink disputes the March 30, 2021, submission date, contending that LiRo initially submitted the NOD to DDC on March 1, 2021 (Mob. Pet. at 10; Mob. Reply at 12). In support, Navesink produced a partial[4] email chain between LiRo and Navesink, embedded in which is a March 29, 2021, email from LiRo's Director of Construction stating, "The Notice of Dispute was submitted to DDC on 3/1/21 and was found by DDC to be deficient on a 3/5/21 call with DDC" (Mob. Reply, Ex. A).

The record does not support Navesink's contention that LiRo submitted the NOD on March 1, 2021. DDC's denial of Navesink's claim was based in part on LiRo's untimely submission of the NOD on March 30, 2021 (Mob. Pet., Ex. B; Mob. Resp., Ex. 6). LiRo's submission contains no mention of any prior submission attempts (Mob. Resp., Ex. 6). Notably, in Navesink's own appeal of the agency's determination to the Comptroller, Navesink likewise stated that LiRo submitted the NOD on March 30, 2021, with no mention of any prior submissions (Mob. Pet., Ex. C).

The only evidence Navesink has offered in support of the alleged March 1 submission is a partial email chain containing an unsworn statement from a LiRo employee claiming that the NOD was submitted to DDC on that date. There is no proof of the submission itself nor any acknowledgement from DDC that an NOD was filed on March 1. Although hearsay is admissible in administrative proceedings, "hearsay upon hearsay, especially when it concerns a critical issue, is too unreliable to support any fact findings." *Siemens Electrical, LLC v. Dep't of Environmental Protection*, OATH Index No. 1359/18, mem. dec. at 10 (July 23, 2018). Further, the LiRo employee's unsworn statement lacks the specificity necessary to establish reliability. Accordingly, there is insufficient proof that LiRo submitted the NOD to DDC on March 1, 2021.

The Board also rejects Navesink's argument that LiRo's deduction of $1,161,588.26 in February 2021 did not constitute a written determination triggering the 30-day filing deadline and that a March 19, 2021, email from a DDC representative to LiRo should instead be treated as the operative agency determination (Mob. Reply at 12-13).

The Board has repeatedly held that "a deduction from a payment application or a partial payment is a determination or action that triggers the 30-day filing deadline." *Fire Alarm Electrical Corp. v. Dep't of Citywide Administrative Services*, OATH Index Nos. 1727/22 &

[4] Although the document appears to have four pages, Navesink only provided two of the four pages.

2831/22, mem. dec. at 6 (May 23, 2023) (cleaned up); *see also Acme Industrial Inc., LLC v. Dep't of Environmental Protection*, OATH Index No. 287/25, mem. dec. at 2-3, 9 (Jan. 22, 2025) (finding that an email notifying a contractor that a deduction would be taken constituted an agency determination); *Rockmore Contracting Corp. v. Dep't of Parks & Recreation*, OATH Index No. 2661/22, mem. dec. at 7 (Aug. 25, 2023) ("A deduction taken from a payment application is a 'determination' that triggers the 30-day deadline to file a Notice of Dispute."); *Tishman Construction Corp. v. Dep't of Design & Construction*, OATH Index No. 1081/21, mem. dec. at 7-8 (Dec. 21, 2022) (finding that an email and a unilateral credit against a contractor triggered the obligation to file a Notice of Dispute because the "wording of the deduction is unambiguous and leaves no room for negotiation"); *Gandhi Engineering, Inc. v. Dep't of Transportation*, OATH Index No. 1602/21, mem. dec. at 4-5 (Apr. 27, 2022) (finding agency's issuance of memos that reduced payments to workers triggered the NOD timeline); *JDG Investigations, Inc. v. Administration for Children's Services*, OATH Index No. 547/17, mem. dec. at 6-7 (Mar. 7, 2017) (finding a contractor was required to file a claim when it received payment that it believed was not the full amount owed).

On February 5, 2021, LiRo issued a check to Navesink accompanied by a written invoice documenting the deduction of $1,161,588.26 (Mob. Pet., Ex. A). The invoice clearly identified the amount being deducted, and Navesink's own submissions throughout this proceeding confirm that it fully understood the nature of the deduction. Until the Mobilization Reply, Navesink consistently recognized the February 2021 deduction as the triggering event for filing its dispute. In both the NOD and NOC, Navesink stated that it was submitting a dispute in response to the deduction of $1,161,588.26 on February 5, 2021 (Mob. Pet., Exs. A, C). In the Mobilization Petition, Navesink stated that it was "made aware of the deduction of its mobilization payment upon the receipt of its requisition #54 payment dated February 5, [2021], giving it until March 7, [2021] to present its Notice of Dispute" (Mob. Pet. at 9).

Navesink's conduct establishes that the February 2021 deduction constituted unambiguous notification of an agency determination with which Navesink disagreed. *See, e.g.*, *D'Onofrio General Contractors Corp. v. Dep't of Design & Construction*, OATH Index No. 3554/24, mem. dec. at 6-7 (Apr. 16, 2025) (finding that a contractor's own written acknowledgments of a dispute with a resident engineer's determination established the date on which the 30-day filing period was triggered). As for Navesink's contention that it was "directed to use" a March 19 email from a DDC representative as the "formal rejection, as required by DDC for the basis of Navesink's dispute" (Mob. Reply at 10-11), this alleged directive did not come from DDC but from a LiRo employee. There is nothing in the record to support the conclusion that DDC directed LiRo or Navesink to treat the March 19 email as the operative agency determination.

Accordingly, because the February 5, 2021, deduction was the triggering event for filing an NOD and the NOD was not submitted to DDC until March 30, 2021, the claim is time-barred.

DDC's deduction of mobilization payments was proper

Even assuming that the Mobilization Petition is not time-barred, Navesink's claim fails on the merits.

Neither party disputes the meaning of the term "mobilization." Although undefined in the Prime Contract, the parties agree that mobilization encompasses the preliminary activities undertaken to prepare for construction before construction work begins (Mob. Pet. at 4; Mob. Resp. at 4 n.4). *See also Nova Star Electric Corp. v. Granite Halmar Construction Company, Inc.*, 18 Misc. 3d 1143(A) (Sup. Ct. Queens Co. 2008) ("'Mobilization' involves preliminary work on a construction project such as gathering equipment and ordering materials."). The parties likewise agree that DDC is entitled to omit work under Article 31 of the Prime Contract and that the homes at issue were properly omitted pursuant to that provision (Mob. Pet. at 3; Mob. Resp. at 8-10).

DDC contends that Navesink may only be compensated for documented mobilization costs, which it has failed to substantiate (Mob. Resp. at 8). Navesink argues that it met the mobilization milestone for 11 omitted homes and therefore is entitled to payment equal to ten percent of the contract value under Article 42.2.3 of the Prime Contract without any obligation to document its underlying costs (Mob. Pet. at 4, 6; Mob. Reply at 7-8). The Board finds Navesink's arguments unpersuasive.

As an initial matter, Navesink's reliance on Article 42.2.3 of the Prime Contract is misplaced. Navesink is not a party to the Prime Contract between DDC and LiRo. Article 42.2.3

governs the payment relationship between DDC and LiRo and does not address payments made to subcontractors. Under Prime Contract Article 10.2.4, subcontractors shall be paid in accordance with the terms of their respective subcontracts. The Mobilization Subcontract between LiRo and Navesink contains no analogous milestone payment provision, and Navesink has not articulated what provision of the Mobilization Subcontract entitles it to milestone payments.

Even assuming that Article 42.2.3 of the Prime Contract confers rights upon a non-party subcontractor, that provision neither immunizes the subcontractor from review of whether the underlying work was actually performed nor creates an irrevocable entitlement to retain milestone payments. Navesink argues that issuance of the Milestone Completion Certification, and the fact that payment was made, conclusively establishes that the mobilization milestone was achieved and that Navesink is entitled to retain mobilization payments (Mob. Reply at 5, 7). The Prime Contract forecloses that argument.

Article 34 of the Prime Contract, the No Estoppel Clause, provides:

> Neither the City nor any department . . . shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this Agreement by the City, the Commissioner, the Commissioner's Representative, or any other officer, agent or employee of the City . . . from showing the true and correct classification, amount, quality or character of the Work actually done; or that any such determination, decision, order, letter, payment or certificate was untrue, incorrect or improperly made . . . [and] from demanding and recovering from the Contractor any overpayments made to him . . . .

See also Mob. Subcontract Art. 32. The Prime Contract further imposes affirmative recordkeeping requirements on contractors, requiring them to “[k]eep accurate and detailed written records of the progress of each Home within the Work Order and the Project during all stages of planning and construction,” “[m]aintain a daily job diary or log book describing all activities which occurred on the Project on a daily basis,” and “[m]aintain accurate, orderly and detailed files and written records and documents regarding the Project, including without limitation, correspondence, minutes and/or reports of job conferences . . . ." Prime Contract Art. 11.6.5; *see also* Mob. Subcontract Art. 33.2. Read together, these provisions make clear that a contractor bears an ongoing obligation to document its work and that neither the prime contractor's certification nor the agency's issuance of payment qualify as definitive proof that the underlying work was performed.

Even assuming that Navesink could establish an entitlement to retain mobilization payments for completed pre-construction work, it has failed to produce sufficiently reliable evidence to substantiate its costs. Although Navesink alleged that it has undertaken preparatory activities and incurred significant expenses as a result, there is insufficient evidence of its alleged activities and expenses. Navesink's supporting documents included internal compilations of general business expenses; costs associated with a building allegedly purchased for unspecified mobilization purposes; lists of vendors, invoices, and amounts paid with no explanation of what the payments were for; cost breakdowns for ten[5] homes; and voluminous "Check Activity" and "Paid Invoice Register" reflecting payments to unidentified entities for undefined purposes (Mob. Pet., Ex. D). Such generalized internal documents do not establish what mobilization work, if any, was actually performed for any specific home.

Moreover, the per-home cost breakdowns are insufficiently supported. First, they are not accompanied by corroborating documents such as invoices, contracts, or cancelled checks. Although Navesink produced hundreds of pages of "Check Activity" and "Paid Invoice Register," its per-home breakdowns do not refer to any payment dates, invoice numbers, check numbers, or other identifying information that would permit verification of the claimed costs.

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[5] Nine of the homes are expressly identified: APP-003058, 25 Brighton 7 Court; APP-004468, 2833 West 17 Street; APP-006333, 40 Gotham Avenue; APP-008061, 3153 Shore Parkway; APP-008382, 1117 Blake Court; APP-008540, 24 Lincoln Terrace; APP-009155, 31 Lincoln Terrace; APP-014710, 26 Lincoln Terrace; and APP-017625, 32 Lincoln Terrace. Navesink also provided the cost breakdown for a tenth home which had demolition completed on December 7, 2017, and removed from its portfolio on February 13, 2018, but neither the address nor APP number is identified (Mob. Pet., Ex. D at 51-56). No identifiable breakdowns have been provided for APP-017713, 27 Lincoln Terrace, or APP-025851, 3 Lake Avenue.

Second, rather than documenting actual payroll costs, Navesink calculated its per-home payroll expenses by dividing its project-wide total office salary by overall construction value and applying that value to each removed home, resulting in a flat rate of $74,975.24 per property in payroll costs (*see, e.g.*, Mob. Pet., Ex. D at 43). This formulaic extrapolation does not demonstrate that labor costs were actually incurred to mobilize for any particular home.

Third, Navesink's descriptions of its purported mobilization activities lack specificity and corroboration. Although Navesink asserted that it conducted numerous meetings with various subcontractors, it provided no meeting dates, agendas, minutes, attendance records, or other supporting documentation. Significantly, Navesink's descriptions for these meetings are identical across multiple homes. For example, the description of meetings with Summit Shoring is reproduced verbatim in each per-home breakdown (*compare* Mob. Pet., Ex. D at 47, *with Id.* at 51, 60, 67, 74, 81, 88, 95, 102, 109). The uniformity of these descriptions across distinct properties undermines their reliability as evidence of individualized mobilization activities.

Lastly, Navesink's cost submissions appear to contain duplicative charges. Navesink represented that two staff members spent 16 hours "to review all eleven house plans" at a total cost of $1,920 (*See* Mob. Pet., Ex. D at 45). Yet, that same $1,920 amount was included as a separate line item in each of the ten per-home breakdowns (*Id.* at 45, 54, 59, 66, 73, 80, 87, 94, 101, 108), effectively counting the same expense ten times and inflating the total claim by over $17,000 on that item alone.

The unreliability of Navesink's claim is further illustrated by its inability to account for the number of homes at issue. DDC provided a breakdown demonstrating how $1,161,588.26 was paid as mobilization costs for 12 homes, including $65,400.33 paid for APP-012803, 10218 Avenue L (Mob. Resp. at 3-4). Navesink has not disputed this breakdown but contends that only 11 homes are in dispute, excluding the $65,400.33 paid for 10218 Avenue L (Tr. 16-17). Despite its concession that only 11 homes are in dispute, Navesink nonetheless seeks the full $1,161,588.26 amount for 12 homes (Tr. 8). This inconsistency further calls into question the reliability and accuracy of Navesink's claim.

Navesink has failed to establish a contractual entitlement to milestone payments and produce reliable evidence substantiating the claimed mobilization costs. The Mobilization Petition is therefore denied in its entirety on the merits.

Navesink's claims under the Forced Credit Petition are granted in part

DDC does not dispute that Navesink is entitled to payment for two of the five line items in question: $6,549.54 for Item No. 196, a missing set of stairs; and $570.12 for Item No. 158, the provision of portable toilets for three months (FC Resp. at 4-5 n.4). Accordingly, Navesink should be compensated for the costs of these two items, with a 2.99 bid multiplier, which totals $21,287.78. However, as to the three remaining line items, Navesink's claims must be denied.

As to Item No. 156, pricing $4,125.12 for 96 hours of general labor at $42.97 per hour, Navesink asserts that it is entitled to compensation because there is no dispute that it had performed the work associated with the line item, i.e., "the demolition of the sunroom, gluing down carpet, for the concrete slab around the house, demolition of pavers, HVAC, planters, storage container and the front door awnings" (FC Pet. at 5; FC Reply at 5). DDC contends that Navesink's demolition work is captured under other line items for demolition and that Navesink has failed to provide sign-in sheets, certified payroll records or contractor daily logs (FC Resp. at 8).

The term "General Labor" is not defined in the contract documents. Although DDC asserts that Navesink's demolition work is covered under demolition line items, that position appears to rest primarily on similarities between the square footage associated with those items and the work performed by Navesink. Moreover, at oral argument, DDC conceded that it was unclear what type of work "General Labor" was meant to entail (Tr. 31-32). However, there is also nothing in the record supporting Navesink's contention that Item No. 156 was specifically created as compensation for the work it described.

Even assuming that "General Labor" was intended to encompass the work described by Navesink, the fact that the work was completed does not automatically entitle Navesink to payment. Unlike unit price line items tied to completed quantities of work, Item No. 156 is expressly quantified by hours. As such, entitlement to compensation necessarily depends upon proof of the number of hours actually performed.

Here, Navesink has provided no evidence substantiating that 96 hours of General Labor were performed. Although Navesink acknowledges that it was required to maintain records, such as daily reports and certified payrolls, and asserts that it previously provided all required documentation to DDC (FC Reply at 3, 5), none of those records were submitted to the Board. The Board therefore has no basis upon which to determine the number of hours worked under this line item. Accordingly, Navesink's claim for 96 hours of general labor work must be denied.

As to Item No. 159, the temporary power provided via an overhead hook-up, and Item No. 183, the pumping of standing water via truck-mounted pump, there is no dispute that Navesink did not perform the work with the methods specified by the ECR. Navesink provided temporary power to the worksite using temporary generators and removed standing water with a surface-mounted pump (FC Pet. at 6-7). Navesink concedes that it did not use the ECR-prescribed methods but contends that because it had performed the work, it is entitled to compensation. There is no merit to this argument.

Under the Prime Contract, "[c]hanges may be made to this Contract only as duly authorized by the Agency Chief Contracting Officer or his or her designee. Contractors deviating from the requirements of . . . [the] contract without a duly approved change order document, or written contract modification or amendment, do so at their own risk." Prime Contract Art. 26.1; *see also* FC Subcontract Art. 25. However, Navesink had deviated from the prescribed scope of work without obtaining approved change orders.[6] Even though the contractor is responsible for the means and methods of its work, where, as here, the method of work is specifically described by contract documents, the contractor must adhere to contract requirements. The ECR contemplated payment for work accomplished through specific means,

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[6] In its petition, Navesink alleged that it had submitted a change order related to the use of temporary generators and that the denial of change order is before the Board in a separate petition dated October 23, 2023 (FC Pet. at 7; FC Pet., Ex. K). The Board has no record of any such separate petition related to the use of generators. As DDC pointed out in their response, the October 2023 letter appears to relate to the Forced Credit Petition, there is no record of a such a change order, and that Navesink had previously admitted that it did not submit a change order for generators (FC Resp. at 9). In Navesink's reply, it did not dispute DDC's assertions that no change order was submitted (FC Reply at 5-6).

i.e., the provision of temporary power through an overhead hook-up and the dewatering with a truck-operated pump. Having failed to complete the work in the prescribed manner, Navesink cannot be compensated under these line items.

As to Navesink's contention that it would be inequitable for DDC to deny payment because it had accomplished its objectives, albeit through other means, "it is well settled that the Board cannot provide equitable relief." *Welkin Mechanical LLC v. Dep't of Environmental Protection*, OATH Index No. 2244/22, mem. dec. at 29 (June 14, 2023). Moreover, there is nothing inequitable in denying relief for line item work that the contractor admittedly did not perform where an alternative avenue for relief was available: that is, for Navesink to obtain change orders for its deviation from work contemplated by the ECR. Lastly, even if equitable relief could be provided, there is no evidence of Navesink's actual costs in performing the work.

The Forced Credit Petition is granted in part and denied in part.

Conclusion

For the foregoing reasons, the Mobilization Petition is denied in full. The Forced Credit Petition is granted in part with respect to Item No. 196, the missing set of stairs and Item No. 158, the provision of portable toilets for three months, for a total of $21,287.78. The Forced Credit Petition is denied in part with respect to the remaining line items.

This constitutes the final decision of the Board. All concur.

Hanchun Lin
Administrative Law Judge

June 24, 2026

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