Knightsbridge Construction Corp. v. Dep't of Design & Construction

OATH Index No. 1368/25, mem. dec. (Apr. 1, 2026)

Contractor sought additional compensation for contract work balance, registered change order work, unresolved change orders and claims, legal fees, and lost interest. Claims for extra work, contract balance, registered change orders, legal fees, and lost interest denied. Six claims remanded back to the agency to determine credit deduction or change order amounts. Delay claims not properly before the Board.

New York City Office of Administrative Trials and Hearings

In the Matter of

Knightsbridge Construction Corporation

Petitioner

-against-

Department of Design and Construction

Respondent

Memorandum Decision

Christine Stecura, *Administrative Law Judge/Chair*

Jade Gary, Esq., *Mayor's Office of Contract Services*

Paul Wexler, Esq., *Prequalified Panel Member*

Table of Contents

Pending before the Contract Dispute Resolution Board ("CDRB" or "Board") is the petition of Knightsbridge Construction Corporation ("Knightsbridge" or "petitioner") in connection with its contract with the Department of Design and Construction ("DDC" or "respondent"). Petitioner seeks a determination that under the contract it is entitled to payment of $1,514,931.25, consisting of $118,344.69 in contract work balance, $6,078 for registered change order work, $1,063,020.02 for unresolved change orders and claims, $75,000 in legal fees incurred and anticipated, and $252,488.54 in lost interest.

For the reasons below, the Board denies or dismisses the petition and remands three claims to DDC to determine proper deduction amounts.

Background

This dispute arises from a lump sum construction contract between Knightsbridge and the City of New York, acting through DDC under Project Identification Number CO277ELV2 and Contract Registration Number 20181401520, for $2,711,000 (the "Contract"). The Contract is for the furnishing of all labor and materials necessary for elevator modernization at a courthouse located at 25-10 Court Square, Queens, New York (the "Courthouse"). A Notice to Proceed was issued on September 8, 2017 (Pet. Ex. B at PDF p. 62).

The original end date of the Contract was December 31, 2018. On December 15, 2018, Knightsbridge requested an extension of the contract from January 1, 2019, to August 12, 2019 (Pet. Ex. A at PDF p. 51). On August 1, 2019, Knightsbridge requested a second time extension to December 12, 2019 (Pet. Ex. A at PDF p. 48). On August 22, 2020, Knightsbridge requested a third time extension to September 30, 2020 (Pet. Ex. A at PDF p. 45). Finally, on November 22, 2021, Knightsbridge requested a fourth time extension to February 3, 2021, and attached a Bill of Particulars (Pet. Ex. A at PDF pp. 26, 28-38). All four time extensions were granted. Substantial completion was achieved on February 3, 2021.

By letter dated December 9, 2021, DDC advised Knightsbridge that it had completed the estimates for the deletion of contract work to be processed as credit change orders totaling $76,199.09 (Pet. Ex. A at PDF p. 15). In a December 16, 2021 email, Knightsbridge disputed DDC's estimates and requested a breakdown for each change order proposal ("COP") (*Id.* at PDF p. 17).

On June 8, 2023, the Office of the New York City Comptroller (the "Comptroller") approved the Final Time Extension through February 3, 2021 (Pet. Ex. B at PDF p. 63). DDC sent the approval to Knightsbridge on July 5, 2023, along with a statement that Knightsbridge owed DDC $32,800 in liquidated damages at the rate of $400 per day for 82 days (*Id.*).

In an October 18, 2023, letter, DDC attributed the $32,800 in liquidated damages to two periods of delay, totaling 81 days (Pet. Ex. A at PDF p. 19).[1] The letter further advised Knightsbridge that the $76,199.09 deduction would be "applied to the contract retainage and reflected in the Substantial Completion payment," and that all other unresolved deductions would also be applied to the Substantial Completion payment unless the required backup documentation was provided (Pet. Ex. A at PDF p. 19).

The same day, Knightsbridge responded to DDC's letter via email requesting an itemization of all deductions and of what DDC referred to as "previous unresolved/pending deductions" (Pet. Ex. A at PDF p. 21). Knightsbridge stated it had submitted all required backup documentation to DDC (*Id*.). Knightsbridge also disputed DDC's assessment of liquidated damages because the delay did not impact critical path elevator work (*Id*.).

On December 31, 2023, Knightsbridge submitted a Notice of Dispute ("NOD") to DDC's Commissioner requesting final payment in the amount of $1,514,931.25 (Pet. Ex. A at PDF pp. 5-13). On October 10, 2024, the Commissioner issued the Agency Determination, denying Knightsbridge's claims (Pet. Ex. B at PDF pp. 60-61). On November 8, 2024, Knightsbridge submitted a Notice of Claim with the Comptroller, who to date has not responded (Pet. Ex. C at PDF pp. 74-80).

On January 16, 2025, Knightsbridge submitted its petition to the Board, seeking review of the Agency Determination and demanding payment in the amount of $1,514,931.25 (Pet. at 1-2). This amount consists of "$118,344.69 for contract work balance, $6,078 for Registered Change Order work, $1,063,020.02 for Unresolved COPs and Claims stated in Final [Request for Time Extension Bill of Particulars], $75,000 in legal fees incurred and anticipated, and $252,488.54 in lost interest" (Pet. at 2).

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[1] The Agency Determination stated liquidated damages were calculated at a rate of $400/day for 82 days, which totals $32,800 (Pet. Ex. B at PDF p. 63).

On April 24, 2025, DDC answered the petition arguing that the petition should be denied or dismissed in its entirety for various reasons including the Board's lack of jurisdiction over delay claims, Knightsbridge's failure to seek clarification prior to bid submission, and the failure of numerous claims on the merits (Resp. at 1-2). On May 27, 2025, Knightsbridge replied, generally reiterating the arguments set forth in the petition.

On February 20, 2026, ALJ Stecura granted petitioner's counsel's unopposed request to withdraw as counsel and petitioner's request to represent itself via its principal, Jeffrey Sadowsky.

On February 16, 2026, Knightsbridge submitted its final requests for payment to DDC, requesting $118,344.69 in contract work balance and $1,226.80 in approved change order work balance (Tr. 7; ALJ Exs. 2, 3).

Analysis

The Board's authority to resolve contract disputes between an agency of the City of New York and a construction contractor is set forth in the Procurement Policy Board ("PPB") rules, which authorize the Board 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). The Board's "decision must be consistent with the terms of the contract" and the PPB rules. 9 RCNY § 4-09(g)(4); *see also J.H. Electric of New York, Inc. v. Dep't of Sanitation*, OATH Index No. 2637/09, mem. dec. at 9 (Aug. 27, 2009) ("[T]he Board is constrained to render its decision solely based on the terms of the contract and the PPB rules, and has no authority to provide equitable remedies"); *Weeks Marine, Inc. v. Dep't of Sanitation*, OATH Index No. 1296/00, mem. dec. at 8 (June 23, 2000), *aff'd*, 291 A.D.2d 277 (1st Dep't 2002) ("[T]he Board has no authority to provide equitable remedies").

I. DDC is entitled to deductions for Contract or unsubstantiated work

DDC was entitled to take deductions from a substantial completion payment in connection with COPs #26, 27, 28, 29, 34, and 35. These claims are denied or remanded back to the agency to determine the proper deduction amount.[2]

COP #26 Claim for $7,451.23 for paint change denied for non-compliance with Article 28

Knightsbridge alleges DDC improperly deducted $7,451.23 from a substantial completion payment for a change from semi-gloss finish paint to matte finish paint (Pet. at 2).

At DDC's direction, Knightsbridge initially submitted COP #26 for the amount of $8,400 but later revised it to $7,560 (Reply Ex. A at PDF pp. 2-5; Pet. Ex. A at PDF p. 9). On December 9, 2021, DDC Project Director Jenny Ortiz informed Knightsbridge that the amount of paint required was stated in the Contract, matte and gloss paint should cost the same, and that if Knightsbridge disagreed, it should provide supporting documentation to justify the additional costs associated with the painting subcontractor procuring matte paint (Resp. Ex. D). On December 21, 2021, Knightsbridge submitted a third revised proposal (COP #26 REV-3) in the amount of $7,451.23 that included an email from the paint subcontractor and an invoice from the paint vendor (Reply Ex. B at PDF pp. 53-56).

Initially, DDC rejected COP #26 on the basis that it was untimely but later argued that it should be denied because Knightsbridge failed to comply with Article 28 of the Contract by failing to provide the required backup documentation (Pet. Ex. B at PDF p. 64; Resp. at 10). Knightsbridge contended that it provided backup documentation to DDC on four occasions and timely responded to DDC's requests (Pet. at 2). At oral argument, DDC argued that the records submitted by Knightsbridge failed to detail costs associated with the work (Tr. 42).

Article 28 of the Contract requires a contractor performing extra or disputed work to daily submit three copies of written statements to the Resident Engineer signed by the contractor's representative and countersigned by the Resident Engineer (Contract at Art. 28.1). The statements must identify "[t]he name, trade, and number of each worker employed on

[2] At oral argument, DDC maintained that the Engineering Audit Office ("EAO") had audited all credit deductions but later corrected itself in an email stating that "the EAO does not review [credit] deductions" (Tr. 42-43; ALJ Ex. 1).

such Work . . . , the number of hours employed, and the character of the Work each is doing," and "[t]he nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such Work . . ." (Contract at Art. 28.1.1-2).

According to the record before the Board, Knightsbridge provided an email from the paint subcontractor and an invoice from the paint vendor in support of its request for a change order in the amount of $7,451.23 (Reply Ex. B at PDF pp. 53-56). However, Knightsbridge conceded that it did not submit any written statements signed by the resident engineer or the contractor's representative contemporaneous with the work performed (Tr. 10).

Knightsbridge's failure to comply with Article 28's record requirements for its extra and disputed work claims bars its claim for recovery. *See Centennial Elevator Industries, Inc. v. Dep't of Citywide Admin. Services*, OATH Index No. 622/16, mem. dec. at 9 (Dec. 4, 2015) ("Compliance with the contract's recordkeeping requirement is a condition precedent to recovery . . . .") (*citing A.H.A. General Construction, Inc. v. NYC Housing Auth.*, 92 N.Y.2d 20, 30-31 (1998)); *EIC Associates, Inc. v. Dep't of Design & Construction*, OATH Index No. 2022/05, mem. dec. at 14-15 (Nov. 30, 2005) (finding contractor's failure to contemporaneously provide time and material records as required by Article 28 constituted a waiver that defeated the contractor's claim); *Naclerio Contracting Co. v. Environmental Protection Admin.*, 113 A.D.2d 707, 710 (1st Dep't 1985) (finding that if claims were for extra or disputed work, "there must be strict compliance with the requirements of article . . . 28 or any claims relating thereto are explicitly waived . . . .").

As such, this claim is denied.

COP #27 Claim for $9,732.80 for deletion of sump pump work denied and remanded

Knightsbridge alleges that DDC wrongfully deducted $9,732.80 from a substantial completion payment for the deletion of sump pump work (Pet. at 3-4).

The Contract scope of work initially included the installation of a sump pump and new pipe in the basement level of the Courthouse, but early in the project, the engineer of record and the Department of Citywide Administrative Services ("DCAS") determined that this work could be omitted, to which Knightsbridge agreed (Pet. Ex. B at PDF p. 64). There is no dispute that DDC is owed a credit for this work, but the parties differ on the amount.

On June 10, 2021, Knightsbridge submitted a credit proposal for the deleted work in the amount of $4,900 to DDC (Resp. Ex. G; Pet. Ex. A at PDF p. 8). On July 6, 2021, DDC responded with a proposal for $20,787, which, on January 14, 2022, it revised to $17,699.90 (Pet. Ex. A at PDF p. 8; Resp. Ex. D). DDC's proposal was supported by a detailed estimate of the omitted work, including a description of the work, quantities, labor, material, and payroll taxes (Resp. Ex. H). Knightsbridge objected to DDC's estimate and submitted a revised proposal of $7,967.10 on January 31, 2022 (Reply Ex. B at PDF pp. 75-76). Knightsbridge's revised proposal contained minimal information and utilized lower labor rates and material costs in its calculation (*Id.*).

Knightsbridge described DDC's credit estimate as "grossly inaccurate" and insisted upon the $7,967.10 value (Pet. Ex. A at PDF p. 8). DDC rejected Knightsbridge's claim in its Determination, stating that this amount did not account for the materials, labor, and time saved by the contractor because of the deleted work (Pet. Ex. B at PDF pp. 64-65).

In the bid breakdown, Knightsbridge estimated the cost of the sump pump and other plumbing work to be $15,000 but argued that the bid breakdown should not be relied upon in assessing the proper value of the omitted work, as it includes "other work and markups for change order negotiation purposes" (Resp. Ex. F at PDF pp. 94-95; Reply at 7-8).

Article 29.1 states that "[i]f any Contract Work in a lump sum Contract . . . is omitted . . ., the Contract price, subject to audit by the [Engineering Audit Officer], shall be reduced by a pro rata portion of the lump sum bid amount based upon the percent of Work omitted . . ." (Contract at Art. 29.1). It further provides that the bid breakdown shall be considered when determining this amount but shall not be determinative (*Id*.).

While the Board finds that a deduction was proper, the record before the Board is inadequate to determine whether $9,732.80, the additional amount deducted by DDC beyond what Knightsbridge agreed to, was correct. The Board is an appellate tribunal and is not empowered to act as a fact finder. *See Fire Alarm Electrical Corp. v. Dep't of Environmental Protection*, OATH Index Nos. 1525/22 & 2830/22, mem. dec. at 13 (Dec. 11, 2023) ("The Board functions as the appellate tribunal within this process. Its role is to review the agency head's determination, not function as a fact-finder or trial court."); *Schlesinger-Siemens Electrical, LLC*

v. Dep't of Environmental Protection, OATH Index No. 1817/10, mem. dec. at 3-4 (June 25, 2010) (contract dispute remanded where the Board found the factual record inadequate to make a determination); *Kreisler Borg Florman General Construction Co. v. Dep't of Design & Construction*, OATH Index Nos. 800/06, 801/06, 802/06, 803/06 & 1154/06, mem. dec. at 6 (Apr. 12, 2006) (contract dispute remanded where the Board faced an inadequate record due to the failure of the commissioner and the Comptroller to review the case on its merits).

Thus, Knightsbridge's claim is denied and remanded to the agency for further fact-finding to determine the proper deduction amount.

COP # 28 Claim for $2,872.14 for resident engineer field office furniture remanded

Knightsbridge alleges that DDC wrongfully deducted $7,244.14 for missing field office furniture and that the proper amount of the credit is $4,352 (Pet. at 3).

The Contract required Knightsbridge to furnish equipment and furniture for the onsite DDC Field Office (Contract at Specification 01 50 00 § 3.8). Knightsbridge admitted that it did not provide all items required under the Contract and agrees it owes DDC a credit, but the parties dispute the amount.

On June 10, 2023, Knightsbridge submitted a credit proposal for $3,751 for the missing field office furniture (Pet. Ex. B at PDF p. 65). Knightsbridge further submitted revised credit proposals on July 19, 2021, and August 2, 2021, for $3,902 and $4,352, respectively (Reply Ex. B at PDF pp. 46, 65). In its proposal for $4,352, Knightsbridge included a breakdown of the costs, including price quotes for folding chairs and keyed entry doorknobs, and an email from Staples confirming an order for three swivel chairs and one desk (*Id*. at PDF pp. 47-50).

DDC claimed that it is owed a credit of $7,224.14 (Pet. Ex. A at PDF p. 15; Resp. Ex. D at PDF pp. 82-83). In its November 29, 2021, credit change order, DDC specified the equipment and quantity of items not provided and the total cost (Resp. at 10 (*citing* Resp. Ex. K)). According to DDC, Knightsbridge provided one single pedestal desk and three swivel chairs (Resp. Ex. K at PDF p. 123). DDC further argued that any items Knightsbridge did provide were used almost exclusively by Knightsbridge, requiring DDC to use office furniture provided by the Courthouse administrators (Resp. at 10; Pet. Ex. B at PDF p. 65).

Knightsbridge argued that the amount DDC requests in credits is improper and that DDC failed to consider Addendum #2's revisions in its calculations (Pet. at 3; Pet. Ex. B at PDF p. 65). In Attachment A to Addendum #2, DDC deleted subsection 3.8(B), which required the use of a trailer for the field office, and added subsection 3.8(A), which instead required an onsite field office (Contract at Addendum #2, Attachment A, Item No. 2). Subsection 3.8(A) also itemizes a list of equipment to be provided for DDC's exclusive use, including laptops, wi-fi service, phone service, chairs, and tables (Contract at Specification 01 50 00 § 3.8(A)), all of which DDC argues Knightsbridge failed to provide, except for the pedestal desk and three swivel chairs (Pet. Ex. B at PDF p. 65). [3]

The parties agree DDC is owed a credit; however, on this record, the Board cannot ascertain whether the amount deducted by DDC is correct. As previously stated, the Board is not empowered to function as a trial court factfinder. *See Schlesinger-Siemens Electrical, LLC*, OATH 1817/10 at 3. Thus, Knightsbridge's claim is remanded to the agency for further fact-finding to determine the proper deduction amount.

COP #34 Claim for $60,502.30 for painting iron grilles remanded

Knightsbridge alleges in COP #34 that DDC improperly deducted a $13,270.30 credit from a substantial completion payment for painting wrought iron grilles because the work was performed onsite instead of offsite. Knightsbridge claims that DDC wrongfully denied COP #34 because Knightsbridge should have instead been paid $47,232 for this extra work instead of giving DDC any credit (Pet. at 3). The total amount in dispute is $60,502.30 (*Id*.).

The Contract initially required Knightsbridge to unbolt the wrought iron grilles on the elevator landings, transport them offsite for stripping and painting, and then return and reinstall them (Pet. Ex. A at PDF p. 9). After discovery that some of the grilles, if removed, could not be reinstalled without possibly causing significant damage, the parties agreed that Knightsbridge would strip and paint them onsite (*Id.*). The parties disagree on whether the change caused the cost of the work to increase or decrease.

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[3] Subsection 3.8(A) also requires Knightsbridge to provide equipment listed under subsection 3.8(D), but it is unclear from the record whether either party considered subsection 3.8(D) in their respective calculations (Contract at Specification 01 50 00 § 3(A,D)).

On July 21, 2021, DDC requested a COP for the work (Pet. at 3; Pet. Ex. A at PDF p. 9). On August 2, 2021, Knightsbridge submitted COP #34 for $47,232 (Pet. at 3).

DDC disagreed with Knightsbridge's proposal and found that Knightsbridge owes it a credit of $13,270.30 (Resp. at 12; Resp. Ex. D). According to DDC, the change in work eliminated Knightsbridge's cost to remove, transport, strip, re-apply paint and re-install the grilles (Resp. at 11). Knightsbridge maintained that the change in work increased costs because onsite labor was performed at night, which required "nightly protection"; it was done by hand as opposed to by mechanical tools available offsite; workers were paid union wages, which cost more than double that of offsite labor performed during the day; and the onsite work took more hours than offsite work would have (Pet. Ex. A at 9).

DDC rejected Knightsbridge's claim, finding that "[Knightsbridge] failed to submit payment requisition forms for this work [and] [t]here are no additional funds remaining under this Project ID" (Pet. Ex. B at PDF p. 66). Knightsbridge did not deny that it did not submit payment requisition forms but argued that it could not do so without a registered change order in place, and that "exhausting its internal budget" was not a valid defense for DDC (Tr. 10-11; Pet. at 3; Reply at 8). At oral argument, DDC was unable to cite any support in the Contract for its position (Tr. 34-35, 39, 49).

The Contract supports Knightsbridge's position. Article 42 requires that a contractor submit a payment requisition for partial payments in connection with contract work or a change order. Article 42.1 states that "the Contractor may submit to the Engineer a requisition for partial payment in the proscribed form, which shall contain an estimate of the quantity and fair value of the Work done during the payment period" (Contract at Art. 42.1). Article 2.1.35 defines "Work" as "all services required to complete the Project in accordance with the Contract . . . and shall include both Contract Work and Extra Work" (Contract at Art. 2.1.35). Article 2.1.16 defines "Extra Work" as "Work other than that required by the Contract at the time of award which is authorized by the Commissioner . . ." (Contract at Art. 2.1.16). Article 42.4 outlines the payment requisition procedure for work performed pursuant to a change order: "Within [60] Days after receipt of a satisfactory payment application in relation to Work performed pursuant to a change order, the Engineer will prepare and certify, and the

Commissioner will approve, a voucher for a partial payment in the amount of such approved estimate . . .” (Contract at Art. 42.4). Unless DDC had approved COP #34, and there is no evidence before the Board that it had, Knightsbridge was not required to submit a payment requisition for disputed work to preserve its claim.

As such, DDC’s basis for denying Knightsbridge’s claim is not supported by the Contract. Since the Board cannot ascertain the proper value of COP #34, the claim is remanded to the agency to evaluate. *See Schlesinger-Siemens Electrical, LLC*, OATH 1817/10 at 3.

COP #35 deduction for gypsum wallboard in the elevator shaft was proper

Knightsbridge argues that the installation of gypsum wallboard in the elevator shaft was not Contract work, and DDC improperly deducted $38,004.75 from a substantial completion payment for it (Pet. at 3; Reply at 8). DDC maintained that the work was required under the Contract, and therefore it was owed a credit of $38,004.75 (Pet. Ex. A at PDF p. 16; Resp. at 11, Ex. D at PDF p. 83).

Knightsbridge relied on a November 15, 2017 email from the Project Engineer, WSP, to DDC, which states that “[a]fter further review of the contract drawings, we think there has been a misinterpretation . . . . [T]he 2 hr partition[s] . . . are specifically for the Duct Chase and NOT for the entire elevator shaft” (Reply Ex. B at PDF pp. 68-69). Knightsbridge conceded that the Project Engineer issued a bulletin reflecting the change, but no change order was ever approved that modified the Contract (Tr. 13).

The Contract requires the installation of two-hour-rated gypsum wallboard furring in the elevator shafts (Contract at Specification 09 21 16.23 § 2.2). Furthermore, in a response to a bidder question, DDC unequivocally stated that the contractor was responsible for gypsum wallboard furring inside the elevator shafts and confirmed it was necessary to “achieve the required fire rating [and t]he existing elevator shafts are to be fire rated throughout” (Contract at Addendum 2, Attachment A, Item No. 4; Resp. Ex. J at PDF pp. 118-19). As such, Knightsbridge was on notice of the Contract requirement.

Even if the Contract was ambiguous, which it was not, contractors are obligated to seek clarification from the City for ambiguous provisions prior to bid submission. Section 9(A) of the Contract’s Information for Bidders provides that “[p]rospective bidders must examine the

Contract Documents carefully and before bidding must request the Commissioner in writing for an interpretation or correction of every patent ambiguity, inconsistency or error therein which should have been discovered by a reasonably prudent bidder" (Contract at Information for Bidders § 9(A)). *See Dobco, Inc. v. Dep't of Design & Construction*, OATH Index No. 3546/23, mem. dec. at 7-8 (Aug. 2, 2024) (finding that when a contractor fails to seek clarification pre-bid, the contractor "will be bound by the agency's interpretation of the Contract").

Moreover, Article 25.1 of the Contract makes clear that Knightsbridge cannot rely on an email from the engineer of record, as that does not change the Contract requirements or bind DDC. Modifications may be made "only as duly authorized in writing by the Commissioner in accordance with the Law and this Contract" (Contract at Art. 25.1). *See also Triton Structural Concrete, Inc. v. City of New York*, 2018 N.Y. Misc. LEXIS 5571 at *41-42 (Sup. Ct. N.Y. County Sept. 17, 2018) (finding that the contractor could not have reasonably relied on oral statements that notice requirements were waived where Article 25.1 requires modifications to the contract to be made in writing). Without a registered change order, Knightsbridge was required to perform the work, and because the work was not performed, it was proper for DDC to take a credit deduction.

Knightsbridge further argued that even if this work were part of the Contract, its correct value is $13,000 (Pet. Ex. B at PDF p. 66). Neither party provided the Board with an itemized bid breakdown to substantiate the value of the work.

While the Board finds that a deduction was proper, the record before the Board is inadequate to determine whether the amount deducted by DDC, $38,004.75, was correct. As previously stated, the Board is not empowered to act as a fact finder. *See Fire Alarm Electrical Corp.*, OATH 1525/22 at 13 ("The Board functions as the appellate tribunal within this process. Its role is to review the agency head's determination, not function as a fact-finder or trial court.").

Thus, Knightsbridge's claim is denied and remanded to the agency for further fact-finding to determine the proper deduction amount.

COP #29 Claim for $15,000 for deduction for asbestos abatement remanded

Knightsbridge alleges that DDC improperly deducted a credit for $15,000 for asbestos abatement work from Knightsbridge's substantial completion payment, and it submitted COP #29 to correct the improper deduction (Reply Ex. B at PDF p. 52; Pet. Ex. B at PDF p. 71). DDC claimed Knightsbridge charged for work it did not perform (Resp. at 19, Ex. W) and that Knightsbridge failed to comply with Article 28 of the Contract to substantiate COP #29 (Resp. at 19).

DDC is mistaken that Article 28 applies here. Article 28 requires contractors to keep records to evidence the performance of extra or disputed work (Contract at Art. 28). In this case, the work at issue was contract work and the parties do not dispute that it was not performed. The issue to be determined is whether DDC erroneously paid Knightsbridge for work it did not perform and, if so, whether DDC's credit deduction was correct.

As stated above, under Article 29 of the Contract, DDC is entitled to a credit deduction where work is omitted, subject to audit by the EAO (Contract at Article 29.1). DDC relied on Payment #9, a payment requisition form with a line item for $15,000 for asbestos abatement submitted by Knightsbridge (Resp. Ex. W). However, there is nothing before the Board that proves that Knightsbridge was actually paid $15,000 for the work. As such, the Board remands the claim to the agency for further fact finding to determine whether DDC properly deducted $15,000 for the work.

II. Knightsbridge is not entitled to compensation where it failed to keep records

DDC properly denied COPs #19, 23, and 25 where in each instance, Knightsbridge failed to comply with Article 28 of the Contract. Knightsbridge's failure to comply with Article 28's record requirements for its extra work claims bars its claims for recovery. *See Centennial Elevator Industries, Inc.*, OATH 622/16 at 9 ("Compliance with the contract's recordkeeping requirement is a condition precedent to recovery. . . .") (citations omitted).

As discussed below, these claims are denied or remanded.

COP #19 Claim for $1,261.30 for extra work for electrical subcontractor denied

Knightsbridge alleges that DDC wrongfully denied its change order for $1,261.30 for the electrical subcontractor to assist a consultant in the inspection of the top of the elevator shaft

(Reply at 10; Resp. Ex. Q). According to the Agency Determination, the Commissioner rejected COP #19 because Knightsbridge failed to submit documentation required by Article 28 (Pet. Ex. B at PDF p. 70). While Knightsbridge did include its subcontractors' special use work order form, it did not submit the records required under Article 28.

As such, this claim is denied.

COP #23 Claim for $146,124 for extra work for an elevator operator denied

Knightsbridge alleges that DDC wrongfully denied its change order for $146,124 in connection with Knightsbridge hiring an elevator operator to manually run one of the elevator cars when the other one was inoperable (Pet. at 6, Ex. B at PDF p. 70).

DDC initially rejected this change order citing Knightsbridge's contractual obligation to keep the elevators operational during construction (Pet. Ex. B at PDF p. 70). However, DDC later prepared COP #23 for $146,124 and requested that Knightsbridge submit back up documentation, including payroll reports, sign-in sheets, and cancelled checks to substantiate its claim (*Id.*; Resp. Ex. S). Knightsbridge admitted it failed to submit documentation required by Article 28, claiming that payroll and cancelled checks were not maintained for the operator (Pet. Ex. B at PDF p. 70). Knightsbridge argued that Courthouse security required that all people, including the operator, sign in with security, and these records are not kept by Knightsbridge (Tr. 46). Nevertheless, Knightsbridge remained obligated under Article 28 of the Contract to maintain required records.

As such, this claim is denied.

COP #25 Claim for $63,006.75 for emblem painting denied and remanded

Knightsbridge alleges that DDC wrongly denied its change order for $63,006.75 for extra work in connection with hand painting 241 emblems on five floors of the Courthouse (Pet. Ex. A at PDF pp. 30-31; Resp. Ex. U). Knightsbridge originally submitted COP #25 requesting $37,545, but later revised its request to $63,006.75 based on its claim of 360 hours of work (Pet. Ex. A at PDF pp. 30-31; Resp. Ex. T; Reply at 11). Knightsbridge also argued that the cost reflects that the work was required to be performed by hand at night and was delayed by the COVID-19 shutdown and another shutdown caused by an adjacent building's structural issue (Tr. 18; Reply at 11).

Knightsbridge proposed a labor rate of $100 per hour but did not submit any evidence to substantiate the amount sought (Resp. Ex. T).[4] According to the Contract's Prevailing Wage Schedule, a decorative painter makes $44 per hour, plus $26.37 per hour for supplemental benefits, for a total of $70.37 per hour, plus overtime and any allowable profit mark up (Resp. Ex. V). This amount does not account for any overtime or allowable markups for profit.

DDC does not deny that Knightsbridge is entitled to a change order but disputes the amount sought by Knightsbridge. DDC argued that the reasonable amount is $11,916.16[5] based on a December 2021 change order estimate in which DDC estimated that Knightsbridge had completed 104 hours of work at a rate of $79.70 per hour, plus $6.63 per hour for Worker's Compensation and $5.14 per hour for payroll taxes, for a total of $91.47 per hour (Resp. Ex. U; Pet. Ex. B at PDF p. 71). DDC further argued that Knightsbridge's quoted price of $100 per hour "far exceeded the Contract price of $41" (Resp. at 19), however the change order estimate shows that DDC's estimated rate of $91.47 per hour in the change order estimate (Resp. Ex. U) was close to Knightsbridge's proposed rate of $100 per hour. Thus, the main dispute for this claim is for how many hours of labor Knightsbridge should be compensated; DDC claimed 104 in the change order estimate while Knightsbridge claims 360. Knightsbridge conceded that it did not keep time and material tickets but argued that anyone entering the Courthouse, including workers, signed in with security, and those records are not kept by Knightsbridge (Tr. 20, 46).

Nevertheless, the argument that the Courthouse may have kept security records does not relieve Knightsbridge of its obligation under Article 28 of the Contract to maintain required records. As such, Knightsbridge's claim for $63,006.75 is denied. Since the Board cannot ascertain the proper value of COP #25 as to the amount per hour owed nor the total number of hours worked, the claim is remanded to the agency to evaluate. *See Schlesinger-Siemens Electrical, LLC v.*, OATH 1817/10 at 3.

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[4] At trial, Knightsbridge argued that the parties agreed to a labor rate of $90 (Tr. 46-47).

[5] The Agency Determination states that the reasonable amount for this change order is $11,916.16, while the DDC change order estimate states that the amount should be $11,936.16 (Pet. Ex. B at PDF p. 71; Resp. Ex. U).

III. Knightsbridge's other extra work claims fail on the merits

COP #16 Claim for $2,902.38 for extra work for vandalism damages denied

Knightsbridge claims it is owed $2,902.38 for extra work after its subcontractor repaired a control board in the elevator machine room that was allegedly vandalized (Pet. Ex. B at PDF p. 69).

Knightsbridge argued that under Article 16.1 of the Contract, "[i]n the event the Commissioner takes over, uses, occupies, or operates any part of the Work . . . the Contractor shall be relieved of its absolute obligation to protect such part of the unfinished Work in accordance with Article 7" (Pet. at 5; Contract at Art. 16.1).

DDC rejected COP #16 because there was no proof of vandalism and even if there was, such damages are not recoverable under the Contract (Resp. at 17). Knightsbridge did not present any evidence that the Commissioner had taken over the work, thereby relieving Knightsbridge of the obligation to protect the work.

Article 7.1 of the Contract imposes an "absolute obligation" on the contractor to secure the work site: "During the performance of the Work and up to the date of Final Acceptance, the Contractor shall be under an absolute obligation to protect the finished and unfinished Work against any damage, loss, injury, theft and/or vandalism" (Contract at Art. 7.1). Furthermore, "in the event of such damage, loss, injury, theft and/or vandalism, it shall promptly replace and/or repair such Work at the Contractor's sole cost and expense" (*Id.*).

The Board has found that the contractor's "absolute obligation" to protect the work prior to final acceptance places the risk of liability on the contractor. *See, e.g.*, *Welkin Mechanical LLC v. Dep't of Environmental Protection*, OATH Index No. 2244/22, mem. dec. at 24-25 (June 14, 2023) ("To interpret Article 7.1 to imply anything less than an absolute obligation would thwart the purpose of the provision, which is to insulate the City from the risk of loss prior to its final acceptance of work under a contract. . . ."); *L&L Painting Co., Inc. v. Dep't of Transportation*, OATH Index No. 280/08, mem. dec. at 4-5, 7 (Feb. 8, 2008) (finding that "absolute obligation" contract language "is unambiguous and has a definite and precise meaning for which there is no reasonable basis for a difference of opinion") (internal quotation marks and citation omitted), *aff'd sub nom*, *Matter of L&L Painting Co. v. City of New York*, Index

No. 107877/08 (Sup. Ct. N.Y. County Nov. 10, 2008), *aff'd*, 69 A.D.3d 517 (1st Dep't 2010); *WDF, Inc. v. Dep't of Environmental Protection*, OATH Index No. 1078/06, mem. dec. at 9 (Apr. 26, 2006) (finding that the unambiguous language of Article 7 should be given its plain meaning and that the contractor's "absolute" obligation to repair or replace "is not limited").

Knightsbridge's argument that the vandalism occurred outside of work hours and not during the performance of work also fails (Reply at 10). Knightsbridge's "absolute obligation" to protect the work extended from the beginning of performance until DDC's final acceptance and did not cease during off-work hours. *See MLJ Contracting Corp. v. Dep't of Design & Construction*, OATH Index No. 1526/22 mem. dec. at 10 (Dec. 2, 2022) (finding contractor had an absolute obligation to protect unfinished work from vandalism occurring during off-work hours).

As such, this claim is denied.

COP #5 Claim for $3,996.30 for extra work for the discovery of peeling paint denied

Knightsbridge claims it is owed $3,996.30 for extra work related to the discovery of peeling paint, which possibly contained lead, in the elevator hoistway (Pet., Ex. B at PDF p. 69). Knightsbridge argued that the peeling paint was a hazardous condition materially different from what was shown in the Contract Drawings and not reasonably anticipated (Pet. at 4).

In support of this argument, Knightsbridge relied on section 8(B) of the Contract's Information for Bidders which provides that "[s]hould the contractor encounter during the progress of the work subsurface conditions at the site materially differing from any shown on the Contract Drawings or indicated in the Specifications or such subsurface conditions as could not reasonably have been anticipated by the contractor and were not anticipated by the City," the Commissioner should investigate such conditions (Contract at Information for Bidders § 8(B)). Where the Commissioner finds that the conditions do materially differ from the Contract Drawings or Specifications, "or that they could not reasonably have been anticipated by the contractor and were not anticipated by the City, the Contract may be modified with [the Commissioner's] written approval" (*Id.*).[6]

[6] Knightsbridge erroneously cited Article 78.2 of the Contract in the Petition instead of section 8(B) of the Contract's Information for Bidders.

DDC disputed that the condition of peeling paint was not reasonably anticipated. Per section 8(A) of the Information for Bidders, Knightsbridge was required to inspect the job site before submitting its bid. According to DDC, an inspection would have revealed the presence of peeling paint and that Knightsbridge should have anticipated the presence of lead paint given the building's age and condition (Resp. at 16). However, Knightsbridge claimed that the area was not made available to bidders to examine (Reply at 9).

DDC further argued that Knightsbridge was required under Contract Specification 14 21 23, subsection 3.2(A)(11) to "[r]emove oil, dirt and impurities and give a factory coat of rust inhibitive paint to all exposed surfaces . . ." (Tr. 41; Resp. at 13). DDC interpreted this specification as requiring Knightsbridge to paint the hoistway, however, the Contract specifies surfaces to be painted as the "struts, hanger supports, covers, fascias, toe guards, dust covers and other ferrous metal" (Contract at Specification 14 21 23 § 3.2(A)(11)). Knightsbridge maintained that the Contract did not require the hoistway to be painted, and that the discovery of the peeling paint required Knightsbridge to perform extra work (Reply at 9).

The Board finds that peeling paint does not constitute a "differing site condition." Even if Knightsbridge was unable to examine the area prior to submitting its bid, the presence of lead paint is a condition ordinarily encountered when dealing with older, historical buildings, such as the Courthouse. *See Matter of Prismatic Dev. Corp. v. NYC Transit Auth.*, 2020 N.Y. Misc. LEXIS 10057 at *2 (Sup. Ct. N.Y. County Oct. 20, 2020), *aff'd*, 200 A.D.3d 568 (1st Dep't 2021), *aff'd*, 38 N.Y.3d 914 (N.Y. 2020) (rejecting a contractor's differing site condition claim where "there does not appear to be any characteristics at the site of an unusual nature differing materially from those ordinarily encountered in work of this character").

Moreover, Knightsbridge is obligated under the Contract to remove any lead paint. Contract Specification 01 73 00, section 3.6(B) assigns responsibility to the Contractor to "comply with all federal, state and local environmental regulations . . . which require the Contractor to assess if lead-based paint will be disturbed during the work . . . [and to] comply with all federal, state and local environmental waste disposal regulation which may be required during the work. The Contractor is required to hire licensed abatement and disposal companies

for the requisite work" (Contract at PDF pp 685). DDC rejected COP #5 because "OSHA compliance is not considered Extra Work," and the Board agrees (Pet. Ex. B at PDF p. 69).

As such, this claim is denied.

COP #14 Claim for $8,436.60 for extra work for traveler cable denied

Knightsbridge claims it is owed $8,436.60 for extra work for its subcontractor to furnish and install a separate traveler cable for CCTV cameras in the elevators (Tr. 29; Pet. Ex. B at PDF p. 69; Reply at 9-10). DDC rejected COP #14 on the basis that the work was required under the Contract (Resp. at 16-17).

The Board finds that furnishing and installing traveler cable for CCTV cameras in the elevators is Contract work and not extra work. Contract Specification 14 21 23, section 2.4(Y)(2) states that "Traveling cable shall be provided" and specifically contemplates traveling cable for CCTV cameras: "[e]ach traveling cable shall be arranged to provide no fewer than six (6) individually shielded pairs of 20 gauge wire and arranged to contain no less than one (1) coaxial cable for CCTV remote monitoring"). Knightsbridge argued that it provided more cable than what was required under the Contract (Tr. 29) but did not provide any evidence to support this claim.

As such, this claim is denied.

COP #32 Claim for $1,906.50 for extra work for air sample testing denied

Knightsbridge claims it is owed $1,096.50 for extra work in connection with having an independent lab perform air sample testing in the elevator pits (Pet. Ex. B. at PDF p. 72; Resp. Ex. X). Knightsbridge argued that there was no requirement under the Contract to perform air sample testing in the elevator pits, nor was it aware of any requirement at the time of bid (Reply Ex. B at PDF pp. 58-59). Knightsbridge further claimed that DDC specifically requested extra air testing of the elevator air pit prior to approving the Site Safety Plan (Pet. at 7). In the Agency Determination, DDC rejected COP #32 on the basis that Knightsbridge was contractually obligated to test the air and the cost was in the original contract price (Pet. Ex. B at PDF p. 72).

The Board agrees that air sample testing was Contract work and not extra work. Knightsbridge was required under the Contract to prepare a Safety Program and Site Safety Plan before the start of construction (Contract at Safety Requirements § 4). According to the

Contract Safety Requirements, the Safety Program must include "at a minimum" a range of elements including a confined space program, which requires an "atmospheric testing procedure" (*Id.*). In addition, the Site Safety Plan must also include information about the confined space program, which, as established by the Safety Program, must include an "atmospheric testing procedure." Knightsbridge was thus on notice of its obligation to perform atmospheric testing of the elevator pits.

As such, this claim is denied.

COP #33 Claim for $2,720.14 for extra work for fire map signs denied

Knightsbridge claims it is owed $2,720.41 for extra work in connection with furnishing and installing new fire map signs caused by differing site conditions and DDC's design change (Pet. Ex. B at PDF p. 72). Knightsbridge argued that errors in DDC-approved shop drawings and the unanticipated presence of raised steel trim at the sign locations caused it to perform extra work (*Id.*; Reply Ex. B at PDF pp. 61-62).

In the Agency Determination, DDC rejected COP #33 on the grounds that Knightsbridge's field measurements for "drilling, mounting, and sign placement" were incorrect, and DDC ordered Knightsbridge to fabricate new fire maps to ensure compliance with Fire Department requirements (Pet. Ex. B at PDF p. 72; Resp. Ex. Z). DDC argued that any approval of the design does not relieve Knightsbridge of its responsibility to comply with the Contract (Resp. at 21). Knightsbridge maintained that DDC approved the signs' design, and the extra work was caused by DDC's error (Reply at 11).

Under the Contract, Knightsbridge was required to fabricate and install the signs in accordance with the Contract Specifications and was responsible for ensuring their accuracy. Contract Specification 10 14 23, section 1.8(A) requires Knightsbridge to "[v]erify locations of anchorage devices embedded in permanent construction by other installers by field measurements before fabrication, and indicate measurements on Shop Drawings." Contract Specification 01 33 00, section 1.2(C) states that "[t]he approval of Shop Drawings will be general and shall not relieve the Contractor for responsibility for the accuracy of such Shop Drawings, nor for the proper fitting and construction of the work, nor of the furnishing of materials or work required by the Contract and not indicated on the Shop Drawings." Contract

Specification 10 14 23, section 2.10(A) requires Knightsbridge to "[r]emove and replace damaged or deformed signs and signs that do not comply with specified requirements."

DDC's approval of the drawings did not relieve Knightsbridge of its obligation to install the fire map signs in accordance with the Contract and FDNY regulations. Knightsbridge was required under the Contract to replace any signs that did not meet the requirements.

As such, this claim is denied.

IV. The Board does not have jurisdiction to hear Knightsbridge's delay claims

Knightsbridge's delay claims for $37,395.26 for overtime labor in connection with accelerated work on an elevator car, $7,848.65 for increased labor rates caused by project delay, $4,792.82 for extended supervision costs caused by delay in connection with an elevator controller, and $600,000 caused by DDC-directed changes are not properly before the Board.

Article 27.1.2 limits the Board's jurisdiction in part to "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 Contractor's Work to the Contract, and the acceptability and quality of the Contractor's Work" (Contract at Art. 27.1.2). It further states that "such disputes arise when the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner makes a determination with which the Contractor disagrees" (*Id.*). Article. 27.1.2 mirrors section 4-09(a)(2) of the PPB Rules.

It is well established that the Board does not have jurisdiction to hear delay claims. *See, e.g.*, *LAWS Construction Corp. v. Dep't of Parks & Recreation*, OATH Index No. 1445/14, mem. dec. at 10-11 (May 28, 2014), *aff'd*, 2015 N.Y. Misc. LEXIS 11876 (Sup. Ct. N.Y. County July 6, 2015), *aff'd*, 145 A.D.3d 523 (1st Dep't 2016) (Board properly rejected claim resulting from two and one-half-year delay caused by discovery of contaminated cover material at a golf course for lack of jurisdiction); *URS Corp. v. Dep't of Design & Construction*, OATH Index No. 804/05, mem. dec. at 3-4 (Dec. 29, 2004) (granting motion to dismiss for lack of jurisdiction because additional costs caused by the delay from the discovery of hazardous waste at the site and a resulting stop work order constituted delay damages).

The Board looks to the cause of the damages behind a claim to determine whether it should be categorized as delay damages. *See CAB Assoc., Inc. v. Dep't of Transportation*, OATH Index No. 1728/05, mem. dec. at 4-5 (Mar. 6, 2007) (contractor's references to loss of "production time," impact on schedule, and increased costs for materials demonstrated that claim was an improper request for delay damages); *see also Kalisch-Jarcho, Inc. v. City of New York*, 58 N.Y.2d 377, 381 (1983) ("[T]he city's endless revisions of scores of plans and drawings, . . . its failure to co-ordinate the activities of its prime contractors, of which plaintiff was one of four, and . . . other acts of omission or commission interfering with the sequence and timing of the work" caused delay damages). However, "regardless of the cause, if delay disrupts the contractor's manner of performance or extends the time of completion, the claim is for delay damages." *Tutor Perini Corp. v. Dep't of Transportation*, OATH Index No. 2254/19, mem. dec. at 5 (Oct. 2, 2019), *aff'd*, 2020 N.Y. Misc. LEXIS 2077 (Sup. Ct. N.Y. County May 12, 2020) (*citing Corinno Civetta Construction Corp. v. City of New York*, 67 N.Y.2d 297, 313-14 (1986)).

As explained below, each of Knightsbridge's claims are time-related costs and are for delay damages, and as such are not properly before the Board.

COP #4 Claim for $37,395.26 for labor costs for accelerated work on elevator car dismissed

Knightsbridge claims $37,395.26 for overtime labor costs incurred by its subcontractor to accelerate completion of the work on an elevator car (Pet. at 4; Pet. Ex. A at PDF p. 28). DDC directed Knightsbridge to accelerate its work and conduct "extensive overtime to complete the elevator work sooner" (Pet. Ex. A at PDF p. 28).

Knightsbridge alleged that DDC originally agreed to pay its subcontractor a certain amount and then "unilaterally reduced the amount after the work was completed" (Pet. at 4). Knightsbridge originally proposed $45,184 for the work, which was negotiated down to $26,780 (Pet. Ex. A at PDF p. 28). After the work was completed, DDC offered a change order in the amount of $7,789 (Pet. Ex. A at PDF p. 28). DDC directed Knightsbridge to sign Change Order #4 and then submit a claim for the difference (*Id*.). Change Order #4 was signed on February 5, 2021, and it was registered on June 8, 2021. Knightsbridge's claim is for the difference of $37,385 (*Id*.).

DDC argued that Knightsbridge did not substantiate its claim. DDC initially determined that under Article 26.2 of the Contract, "supervision is part of overhead and profit, which cannot be charged on overtime Change Orders" for extra work (Pet. Ex. B at PDF p. 68; Contract at Art. 26.2)).

Knightsbridge disputed DDC's reliance on Article 26.2, which pertains to extra work, arguing that the claim is for overtime work requested by DDC to finish work on an elevator car and not extra work (Pet. at 4). As the acceleration was not caused by an act or omission by the contractor, Knightsbridge argued that the additional supervision costs are compensable under Article 11.4, pertaining to compensable delays (*Id*.). In response, DDC argued that COP #4 is a claim for delay damages and is thus outside the jurisdiction of the CDRB (Resp. at 7-8).

The Board agrees with Knightsbridge that the amount it seeks is not related to extra work but is attributable to the acceleration of completion of work and may be compensable under Article 11.4.1. However, claims for delay damages, such as this one, are not properly before the Board. *See Corinno Civetta Construction Corp.*, 67 N.Y.2d at 313-14 (claim attributed to delay "whether the [increased] costs result because it takes longer to complete the project or because overtime or additional costs are expended in an effort to complete the work on time.")

As such, this claim is dismissed.

CO #13 Claim for $7,848.65 for increased labor rates caused by project delay dismissed

Knightsbridge claims $7,848.65 for reimbursement of a labor rate increase for the elevator subcontractor (Reply at 4). DDC initially rejected COP #13 on the basis that change orders are not issued for labor rate increases (Resp. Ex. C).

Knightsbridge argued that it is entitled to this amount under Article 11 of the Contract because the labor rate increase "was caused by delays to the project that were beyond [its] control, including the COVID-19 pandemic" (Pet. at 5). However, claims for delay damages are not properly before the Board. *See LAWS Construction Corp.*, OATH 1445/14 at 5-6.

As such, this claim is dismissed.

CO #17 Claim for $4,792.82 for extended supervision costs due to delay dismissed

Knightsbridge claims $4,792.82 for reimbursement for expenses it incurred after hiring the former elevator repairman who designed the elevator controllers to fix a controller after an elevator car malfunctioned (Pet. Ex. B at PDF pp. 69-70).

DDC determined that Knightsbridge was required to provide interim elevator maintenance and deemed the work contract work (*Id.*). Subsection 3.4.(B)(4) of Contract Specification 14 21 23 and Item No. 3 of Addendum #2, Attachment A, required Knightsbridge to keep one of the two elevators operational during construction.

Knightsbridge initially argued that it is entitled to this amount under Article 11.4.1.7 of the Contract because it was attributable to an uncontemplated delay (Pet. at 5). DDC contended that COP #17 is a claim for delay damages and should be dismissed for lack of jurisdiction (Resp. at 7). Knightsbridge later argued that its claim is a result of a differing site condition and not a delay (Reply at 12-13).

Nonetheless, the Board finds that Knightsbridge is seeking compensation for expenses that it incurred as a result of the unanticipated elevator malfunction and the resultant delay (Pet. at 5) ("This delay, and the corresponding efforts to remedy the delay, clearly fall within the purview of a compensable delay . . . ."). *See URS Corp.*, OATH 804/05 at 3 (dismissing a contractor's request for additional compensation for expenses associated with work stoppage caused by an unanticipated hazardous condition).

As such this claim is dismissed.

COP #22 Claim for $53,136 for counterweight replacement work caused by delay dismissed

Knightsbridge claims $53,136 for reimbursement for expenses it incurred for its supervisor to oversee counterweight replacement work between January 3, 2019, and March 28, 2019 (Pet. Ex. B at PDF p. 70). Knightsbridge initially requested $35,424 but later revised this amount to $53,136. DDC rejected COP #22, arguing that the Contract only allows for charges related to extra work performed by direct laborers and for supervision but does not permit charges related to overhead and profit on premium or overtime work (*Id.*). DDC also disputed Knightsbridge's request for payment for a period of 12 weeks, claiming that the work was instead completed in 16 days (*Id.*).

Knightsbridge initially argued that it is entitled to recover under Article 11.4.1.5 as its claim stems from a compensable delay caused by a differing site condition (Pet. at 6). It maintained that the expenses were incurred due to a "critical path delay" that extended the Contract's completion date (*Id.*). Knightsbridge later argued that the claim was not caused by a delay, but rather the extra supervision costs were due to the "DDC-ordered counterweight change order work" (Tr. 15-16; Reply at 13).

The Board finds here that Knightsbridge is seeking reimbursement for extended supervision costs that resulted from the time added to the project by the counterweight replacement. The damages are caused by delay, not extra work. *See Blue Water Environmental, Inc. v. Village of Bayville*, 44 A.D.3d 807, 810 (2d Dep't 2007) ("Extra work caused by the delay falls within the category of damages for delay."); *Gemma Construction Co., Inc. v. City of New York*, 246 A.D.2d 451, 453 (1st Dep't 1998) ("[W]hile a contractor may be required to perform additional work on account of a delay . . . that expense does not, ipso facto, become 'extra' work, as that term is defined in the contract.").

As such, this claim is dismissed.

COP #31 Claim for $989 for extension of insurance policy caused by delay dismissed

Knightsbridge claims $989 for the extension of its builder's risk insurance policy (Pet. Ex. A at PDF p. 31; Reply at Ex. B at PDF pp. 71-73). DDC initially rejected this COP on the basis that Knightsbridge failed to submit required documentation or confirm the allowable overhead and profit, which Knightsbridge disputes (Pet. at 7). Knightsbridge argued that the insurance policy was extended at DDC's direction because DDC-ordered changes caused an extension of the project time (Reply at 13).

The Board finds that Knightsbridge is seeking reimbursement for extending the insurance policy, which was necessitated by a delay in the project. *See Tutor Perini Corp.*, OATH 2254/19 at 4.

As such, this claim is dismissed.

Claim for $600,000 for delays caused by DDC directed changes dismissed

Knightsbridge claims $600,000 for extra work which it describes as "direct costs related to specific DDC changes made to contract documents" (Pet. Ex. A at PDF p. 11; Reply at 13). In

its reply, Knightsbridge itemized 15 items that "DDC used for their time extension justification," including the number of days the project was delayed (Reply at 13). Despite referring to the claims as due to "delay," Knightsbridge argued that the costs "have nothing to do with 'delays'" and are attributable to extra work and redesign costs caused by DDC (Tr. 21-23; Reply at 13-14). DDC moved to dismiss the claim based on lack of jurisdiction.

In *Schlesinger-Siemens Electrical, LLC*, OATH 1817/10 at 4, the Board found that a contractor seeking compensation based on expenses incurred due to delays in the project were properly characterized as delay damages: "In its breakdown of the additional expenses caused by respondent's changes, petitioner listed the following: extended performance period/increased cost of general conditions; loss of labor productivity; escalation of materials cost; escalation of labor cost; additional home office overheads and profit; additional bond costs; extended warrant[y] and service costs; and financing costs on retention withheld longer." The Board further found that "[p]etitioner's detailed discussion of each of these items reveals that they are each based on the additional time the changes added to the project." *Id*.

Likewise, Knightsbridge is seeking compensation for expenses incurred for extended salaries of field office staff, extended field office utilities, telephone and consumables, and extended field office overhead (Pet. Ex. A at PDF p. 32). These are increased overhead costs caused by the additional time the changes added to the project. Though Knightsbridge argues otherwise, its claim is for delay damages, and thus, it is not properly before the Board.

For the foregoing reason, these claims are dismissed.

V. The Board does not have jurisdiction to hear disputes regarding liquidated damages

Knightsbridge disputes DDC's "unilateral assessment of liquidated damages" in the amount of $32,800 (Pet. at 4; Pet. Ex. A at PDF p. 19). DDC assessed liquidated damages for "delay in performance" related to slow mobilization of paint work in elevator landings by Knightsbridge's paint subcontractor and Knightsbridge's general "lack of control and management of its contractors and employees after the Covid-19 outbreak" (Pet. Ex. B at PDF pp. 67-68; Pet. Ex. A at PDF p. 19). Knightsbridge argued that liquidated damages were not appropriate under Article 15 of the Contract, which governs liquidated damages, because

Knightsbridge did not fail to substantially complete the work on time or cause any project delays (Pet. at 4; Reply at 14; Contract at Art. 15.1).

Knightsbridge's challenge to DDC's assessment of liquidated damages is beyond the Board's jurisdiction. Neither the contract nor the PPB Rules give the Board the authority to resolve claims for equitable relief. *See Schlesinger-Siemens Electrical, LLC v. Dep't of Environmental Protection*, OATH Index No. 604/10, mem. dec. at 4 (Apr. 16, 2010); *J.H. Electric of New York*, OATH 2637/09 at 9. Moreover, the PPB Rules provide that the Board's review power "shall not apply to disputes concerning matters dealt with in other sections of these Rules . . . ." 9 RCNY § 4-09(a)(1). Assessment of liquidated damages is governed by another section of the PPB Rules, which states that liquidated damages will be determined by an analysis of the delay completed by the engineering staff in consultation with the Agency Chief Contracting Officer, subject to review and approval by the Board of Time Extension. 9 RCNY §§ 4-03(c)(2-3); *see Admiral Construction LLC v. Dep't of Design & Construction*, OATH Index No. 2041/21, mem. dec. at 5 (Mar. 17, 2022); *Schlesinger-Siemens Electrical, LLC*, OATH 1817/10 at 5-6.

As such, this claim is dismissed.

VI. Knightsbridge is not entitled to attorneys' fees or interest

Knightsbridge seeks $75,000 for attorneys' fees incurred and anticipated and $252,488.54 in lost interest for late and incomplete payments, as well as non-payment for work completed (Pet. at 2). DDC argued that Knightsbridge is not entitled to recover for attorneys' fees or lost interest under the Contract and such claims should be denied (Resp. at 21-23).

Article 11.7.3 of the Contract prohibits recovery for attorneys' fees: "The parties agree that the City will have no liability for[,] . . . and the Contractor agrees it shall make no claim for[,] . . . Attorneys' fees and dispute and claims preparation expenses" (Contract at Art. 11.7.3).

As such, Knightsbridge is not entitled under the Contract to attorneys' fees. *See Classic Electric, Inc. v. Dep't of Citywide Admin. Services*, OATH Index No. 214/03, mem. dec. at 21 (Apr. 21, 2004), *aff'd in part*, *modified in part*, *and remanded sub nom*, *Classic Electric Inc. v. Contract Dispute Resolution Bd.*, Sup. Ct. N.Y. County Index No. 112065/04 (Mar. 28, 2005) (finding that the Board lacked jurisdiction to award petitioner attorneys' fees).

Regarding interest, Article 43 of the Contract states that "[d]etermination of interest due will be made in accordance with the PPB Rules" (Contract at Art. 43.3). The PPB Rules prohibit the payment of interest where "payment on the invoice is delayed because of a disagreement between an agency and a vendor over the amount of the payment and other issues concerning compliance with the terms of a contract." 9 RCNY § 4-06(d)(3)(i). Payment of interest is also ineligible "where the City takes a deduction permitted by law or contract against all or part of a payment due the vendor." 9 RCNY § 4-06(d)(4)(iii).

Here, Knightsbridge disputed the amount of payment it is owed and its contract performance, and as such is not entitled to interest. Furthermore, Knightsbridge failed to show that any deductions taken by DDC were not permitted by law or under the Contract and therefore is not eligible for interest for any deductions. *See, e.g., Laws Construction Corp. v. Dep't of Parks & Recreation*, OATH Index No. 1362/12, mem. dec. at 6 (Aug. 14, 2012) (finding contractor not eligible for interest where payment amount was in dispute and no dispute existed that agency took a legal deduction on a payment).

As such, these claims are denied.

Conclusion

For the foregoing reasons, Knightsbridge's claims are denied or dismissed, and six claims are remanded back to the DDC to determine proper credit deduction or change order amounts. This constitutes the final decision of the Board. All panel members concur.

Christine Stecura
Administrative Law Judge/Chair

April 1, 2026

Appearances:

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