



## **When It Comes to Design Errors, Who Pays the Piper?**

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When a construction project goes badly, the project participants will start pointing fingers. Did the contractor follow the design? Did the Owner offer an accurate design? If the contractor followed a faulty design, a court may or may not hold the contractor liable.

Generally speaking, a contractor is bound to build according to plans and specifications prepared by the owner. The plans and specifications should accurately represent the owner's project objectives. The *Spearin* doctrine provides that the contractor is not liable for consequences of defects in such plans and specifications. But this doctrine is wrought with exceptions and contradictory cases. And unfortunately, it provides little guidance to project participants.

For example, recently a federal court held that the contractor who followed the government-owner's specifications was not liable for project delays caused by a faulty design. The government had terminated its agreement with the contractor for default because the contractor failed to timely complete its construction work. However, a material explicitly required by the agreement caused the delays. And the government-owner admitted that it grossly miscalculated its decision for that material. Consequently, the court ruled that the government's termination for default should be converted into a termination for convenience. Therefore, the owner was forced to reimburse the contractor for costs incurred in performing the project.

On the other hand, other courts have held that the contractor has a responsibility to discover and disclose obvious errors and deficiencies in the owner's plans and specifications. And in these cases, the contractor was liable even though it followed faulty design. What lessons do we learn? Contractors, do not close your eyes to deficiencies in the owner's design. But owners, do not expect to hold the contractors liable if the design is deficient.