

# ARMED SERVICES BOARD OF CONTRACT APPEALS

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President

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## OPINION BY ADMINISTRATIVE JUDGE EYESTER

Paragon Defense Solutions, Inc. (Paragon) appeals a deemed denial of its claim concerning a purchase order issued by the Defense Logistics Agency (DLA). Paragon seeks \$59,140 in lost profits and contract administration costs for supplies it never delivered, arguing essentially that it substantially performed. DLA argues that the unilateral purchase order lapsed because Paragon failed to provide the supplies by the required delivery date and Paragon is not entitled to the requested amount.

Paragon elected to pursue this appeal pursuant to the Board's Rule 12.2, Small Claims (Expedited) procedure. Accordingly, this decision shall have no precedential value, and in the absence of fraud shall be final and conclusive and may not be appealed or set aside. 41 U.S.C. § 7106(b)(4)-(5). Paragon also pursued this appeal pursuant to Board Rule 11, in which the decision rests upon written evidence without courtroom testimony. Based on the following, we deny Paragon's appeal.

## FINDINGS OF FACT

1. On June 16, 2022, DLA issued Paragon a purchase order for 644 nozzle distribution kits, for a total of \$379,960 (R4, tab 1 at 1, 6). Paragon was to deliver the supplies by February 13, 2023 (*id.* at 6). DLA issued the purchase order using special emergency procurement authority (*id.* at 2).

2. Box 16 of the purchase order included a check box stating that if it was “marked” the “supplier must sign Acceptance and return.” The box was not marked and Paragon did not sign the purchase order; only the DLA contracting officer signed the order. (R4, tab 1 at 1)

3. The purchase order incorporated by reference applicable clauses as set forth in the DLA Master Solicitation for Automated Simplified Acquisitions (R4, tab 1 at 2). Accordingly, Federal Acquisition Regulation (FAR) 52.213-4, TERMS AND CONDITIONS-SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES) (JAN 2022) was incorporated by reference (R4, tab 1c at 104).

4. On June 16, 2022, Paragon issued a purchase order to the manufacturer for 644 nozzle distribution kits. Paragon sought a delivery date of December 14, 2023. (App. supp. R4, tab 1) This delivery date is ten months *after* Paragon was to have delivered the supplies to DLA. Paragon’s purchase order was initialed on June 23, 2022, and included a handwritten notation that the terms were that 30 percent was required as downpayment with the order, and the balance would be collected prior to shipping “per quote 4/5/22” (app. supp. R4, tab 2). Paragon paid the manufacturer 30 percent of the order on June 24, 2022 (app. supp. R4, tab 3). There is nothing in the record showing that Paragon received any supplies.

5. On December 21, 2022, Paragon requested a 180-day extension because the manufacturer was experiencing a delay in delivering the parts (R4, tab 3 at 119). On February 1, 2023, DLA emailed Paragon requesting copies of the correspondence with the manufacturer which “advised Paragon of the delay and requested the 180-day extension” as well as any additional documents to support the extension request (R4, tab 5 at 124-25). DLA asked Paragon to provide the documents no later than February 2, 2023 (*id.* at 125). On February 1, 2023, Paragon responded, stating it asked the manufacturer for a formal letter (*id.* at 124). Paragon did not provide any correspondence or a formal letter to DLA.

6. By February 6, 2023, as DLA had not heard from Paragon, the contracting officer emailed and stated DLA could not issue a modification to extend the delivery schedule without adequate consideration, as required by Defense Logistics Acquisition Directive (DLAD) 43.102(b)(S-91). DLA stated that pursuant to the directive, adequate monetary consideration for granting the extension was \$23,047.60. (R4, tab 5 at 123) DLA further stated:

If a modification to extend delivery is desired, reply to this email with an offer of monetary or non-monetary consideration and a firm delivery schedule. If no reply is

received offering adequate consideration within 5 days from the date of this email, the material may be accepted as a late shipment and recorded on the contractor's history file; additionally, in the event the original delivery date has lapsed, the Government reserves the right to unilaterally withdraw[] its offer to purchase, and no deliveries will be accepted under the order. The history file may be used for making future awards.

(*Id.* at 123-24) (emphasis added)

7. Paragon responded on February 6, 2023, stating it had been communicating with the manufacturer on a confirmed delivery date and would provide one in the next couple of days. Paragon confirmed that once it knew the delivery date, it "would present our offer of consideration in exchange for the request delivery extension" of the order. (R4, tab 5 at 123) Paragon never provided DLA with copies of any of this correspondence.

8. The delivery date of February 13, 2023, passed and Paragon had not delivered any supplies. On February 14, 2023, Paragon stated its attorney contacted the manufacturer's attorney regarding their "intent and capability of delivering the requested parts." (R4, tab 5 at 122) According to Paragon, the manufacturer was "non-committal" and proposed a 280-day extension, and did not offer Paragon any consideration. Paragon then asked if it could find a different manufacturer despite stating it "already spent [a] substantial amount of time and money on this contract and on" the manufacturer. Paragon believed it had been misled by the manufacturer. (*Id.*)

9. On February 16, 2023, the contracting officer notified Paragon that due to the delinquency and unaccepted counteroffers of both the 280-day delivery extension and alternative source of supply, he would issue a modification withdrawing the purchase order (R4, tab 5 at 122). DLA issued the modification that same day (R4, tab 6 at 126). The modification stated that since Paragon failed to provide the supplies by the delivery date, the purchase order lapsed and was canceled (*id.* at 127). DLA's internal system, the post award request (PAR) system, states the reason for cancellation is "Planning Overprocurement" (R4, tab 7).

10. On February 17, 2023, Paragon emailed the contracting officer expressing concern about the withdrawal, stating it should have been allowed to cure the issue (R4, tab 8 at 129). On February 24, 2023, DLA emailed Paragon stating that a PAR had been created based on this email (app. supp. R4, tab 4). On May 26, 2025, Paragon filed its claim with DLA arguing that DLA failed to provide a cure notice or recognize the excusable delay, and demanded an excessive consideration for the delivery date extension (R4, tab 12 at 149).

## DECISION

Paragon argues that DLA could not withdraw the unilateral purchase order because Paragon had begun performance thereby forming a binding, irrevocable option contract (app. br. at 3; app. reply br. at 2). Paragon contends that DLA’s actions of corresponding with Paragon and negotiating the terms of the delivery date, further confirm the existence of a contract and not an offer (app. br. at 3; app. reply br. at 3). At that point, Paragon argues that DLA’s only path to terminate for failure to deliver was through the procedures of FAR Part 49, which would have required a cure notice (app. br. at 3-4). Paragon also contends that DLA waived the delivery date by waiting 42 days to respond to Paragon’s request for an extension and then engaging in negotiations before and after the delivery date (*id.* at 4). Paragon also argues the contracting officer made no attempt to investigate and consider the supplier delays before terminating (*id.*). Finally, Paragon argues the termination was a pretext because one of the PAR entries shows there was a planning overprocurement cancellation (app. br. at 5; app. reply br. at 5).

DLA argues the purchase order lapsed when Paragon failed to make the delivery per the terms of the order and that it never waived that delivery date (gov’t br. at 4-5). DLA further argues that Paragon’s issuance of a purchase order to the manufacturer at most, created an option contract which lapsed when Paragon failed to meet the delivery date (*id.* at 6). DLA also argues Paragon failed to provide supporting documents evidencing the quantum, i.e., the \$1,900 in “internal contract administrative costs” and the \$57,240 in lost profits (*id.* at 7).

There does not seem to be a dispute that the purchase order was issued pursuant to FAR Part 13 (app. br. at 1, 3; gov’t br. at 5; *see also* finding 3). FAR § 13.004(a) explains that a quotation is not an offer and therefore cannot be accepted by the government to form a binding contract. Rather, the purchase order issued to a supplier is an offer by the government which the supplier can accept either in writing or by furnishing the supplies ordered or proceeding with the work to the point there has been substantial performance. FAR 13.004(a)-(b). Here, since Paragon did not sign the purchase order (finding 2) the only way Paragon could accept it was by furnishing the supplies or engaging in substantial performance.

There is no dispute that Paragon never delivered the supplies by the delivery date (finding 8). As such, DLA had the right to cancel its offer. FAR § 13.004(c). The issues therefore are whether Paragon substantially performed or DLA waived the delivery date. When a supplier substantially performs “in an effort to provide the item that is the subject of the purchase order, an option contract is created and the government’s offer becomes irrevocable until the date specified for delivery.” *Warfighter Def. Inc.*, ASBCA No. 63924, 25-1 BCA ¶ 38,863 at 189,136 (citing *Commwise, Inc. Joseph Wetzel d/b/a Avetel*, ASBCA No. 56580, 09-2 BCA ¶ 34,240

at 169,230 (emphasis added)). However, “[i]f complete performance in accordance with the offer’s terms and conditions is not tendered [by the due date], the ‘offer’ lapses by its own terms.” *Comptech Corp.*, ASBCA No. 55526, 08-2 BCA ¶ 33,982 at 168,082 (citations omitted)). The offer lapses because the supplier can no longer perform in accordance with the offer’s terms. *TTF, LLC*, ASBCA Nos. 58495, 58516, 13 BCA ¶ 35,403 at 173,696.

There was no substantial performance here. Paragon may have issued an order for the kits to its manufacturer, and paid a downpayment, but Paragon sought delivery from the manufacturer well after DLA’s due date for the delivery (finding 4). Likewise, there is no evidence the manufacturer delivered any of the kits (*id.*). In fact, we know that as of the purchase order delivery date, Paragon had not delivered any kits from the manufacturer to DLA (finding 8). There is nothing in the record that evidences substantial performance.

In addition, we note that even if there had been substantial performance, DLA was bound to honor the purchase order only until the delivery date, which Paragon failed to meet. *Syracuse Int’l Tech.*, ASBCA No. 55607, 08-1 BCA ¶ 33742 at 167,043. At that point, the offer lapsed because Paragon could no longer perform in accordance with the offer’s terms. *TTF, LLC*, 13-1 BCA ¶ 35,403 at 173,696.

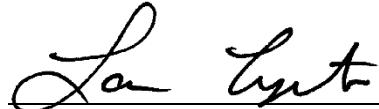
There is also no indication the DLA contracting officer waived the delivery date. Prior to the delivery date, the contracting officer sought evidence that the manufacturer needed the extra 180 days and never received it from Paragon (finding 5). Next, the contracting officer explained it would not issue a modification without adequate consideration (as set forth in DLAD 43.102, including a formula) or a firm delivery date (finding 6). Again, Paragon responded with no delivery dates (finding 7). In fact, prior to the delivery date, the contracting officer specifically told Paragon that if the delivery date lapsed without Paragon providing the supplies, DLA could withdraw the offer (finding 6). And after the delivery date passed, the contracting officer informed Paragon he was withdrawing the offer for failure to deliver, and did actually withdraw it that same day (finding 9). At no point did the contracting officer extend the delivery date for Paragon.

When Paragon failed to deliver, the offer lapsed by its own terms and Paragon was responsible for the costs of non-performance. *See Comptech Corp.*, 08-2 BCA ¶ 33,982 at 168,082 (citation omitted). We note that we have considered all of Paragon’s other arguments and find them to be without merit, as well.

## CONCLUSION

The appeal is denied.

Dated: November 19, 2025



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LAURA EYESTER  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 64308, Appeal of Paragon Defense Solutions, Inc., rendered in conformance with the Board's Charter.

Dated: November 20, 2025



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PAULLA K. GATES-LEWIS  
Recorder, Armed Services  
Board of Contract Appeals