

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -)
)
Paragon Defense Solutions, Inc.) ASBCA No. 64309
)
Under Contract No. SPE7L1-23-P-1551)

APPEARANCE FOR THE APPELLANT: Mr. Weiwei Jian
President

APPEARANCES FOR THE GOVERNMENT: Gary P. Bilski, Esq.
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OPINION BY ADMINISTRATIVE JUDGE MCILMAIL

Appellant, Paragon Defense Solutions, Inc. (Paragon), requests that the Board award \$8,833.50, and convert to a termination for convenience what Paragon says was the improper termination of its contract.¹ Paragon elected to proceed under the Board's Small Claims (Expedited) procedures, Board Rule 12.2. The Contract Disputes Act, 41 U.S.C. §§ 7106(b)(4)-(5), as implemented by Board Rule 12.2, provides that 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. In addition, the parties agreed to proceed under Board Rule 11; that is, on the written record, without a live hearing.

FINDINGS OF FACT

On December 6, 2022, the government issued a unilateral purchase order to Paragon for 225 parts described as "CC-8521AN Lock ,Electromagneti[c]," for \$629,550, to be delivered within 150 days; that is, by May 5, 2023.² By May 5, 2023, Paragon had delivered only 75 locks to the government.³ On May 12, 2023, the

¹ App. br. at 4; compl. at 3.

² See R4, tab 1 at 1, 4; app. br. at 1 ¶ 1; answer at 2 ¶ 5.

³ Compl. at 2 ¶ 7; answer at 3 ¶ 7.

government unilaterally issued Modification No. 1; the modification states that “[s]ince that date”—that is, May 5, 2023—“was not met, the Government’s offer to purchase has lapsed.”⁴ The modification continued:

Therefore, this modification is issued to reduce the purchase order quantity for closeout of the order. The quantity is hereby reduced from 225 EA to the already-delivered quantity of 75 EA. No further deliveries will be accepted under this order.⁵

Paragon never delivered the last 150 locks contemplated by the purchase order.⁶ On May 28, 2025, Paragon submitted to the contracting officer a claim for \$8,833.50 in expected profit on the 150 units that Paragon did not deliver.⁷

DECISION

A unilateral purchase order is an offer to create an option contract. *DODS, Inc.*, ASBCA No. 57816, 12-2 BCA ¶ 35,082 at 172,287. Purchase orders have three distinct phases — (1) the offer, (2) the option contract, and (3) the completed purchase and sale contract. *Id.* In the offer phase there is no contract and the government is free to revoke the offer at any time before an option contract arises. *Id.* If the contractor engages in “substantial performance” in attempting to supply the item, an option contract is created wherein the offer becomes irrevocable. *Id.* If the contractor successfully performs the contract by delivering conforming services or supplies *on time*, a completed purchase and sale contract comes into existence. *Id.* However, if complete performance in accordance with the offer’s terms and conditions is not tendered, the option contract and purchase order lapse without the need for any action on the part of the government. *See id.*; *Warfighter Def. Inc.*, ASBCA No. 63924, 25-1 BCA ¶ 38,863 at 189,136; *Comptech Corp.*, ASBCA No. 55526, 08-2 BCA ¶ 33,982 at 168,082; *see also Coiltron, Inc.*, ASBCA No. 50664, 97-2 BCA ¶ 29,179 at 145,112.

Paragon’s delivery of 75 locks by May 5, 2023, was substantial performance of the purchase order to provide 225 locks by May 5, 2023, creating an option contract wherein the government’s offer became irrevocable. However, because Paragon did not deliver the remaining 150 locks on time—that is, by May 5, 2023 (or at all)—the option contract and the purchase order lapsed without the need for any action on the part of the government. Paragon seeks only profit on the 150 locks that it never

⁴ R4, tab 9 at 154-55.

⁵ R4, tab 9 at 155.

⁶ *See* app. reply at 3; R4, tab 13a at 160-61.

⁷ R4, tab 13a at 160-61.


delivered: we take it, then, as the government contends,⁸ that the government has paid for the 75 locks that were delivered. Because Paragon did not deliver those last 150 locks, no completed purchase and sale contract for those 150 locks, pursuant to which the government could owe any further payment to Paragon, came into existence.

The parties' other contentions have been considered and found unnecessary to address. For all these reasons, the appeal is denied.

CONCLUSION

The appeal is denied.

Dated: November 20, 2025


TIMOTHY P. MCILMAH
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. 64309, Appeal of Paragon Defense Solutions, Inc., rendered in conformance with the Board's Charter.

Dated: November 20, 2025


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

⁸ Gov't br. at 2 ¶ 5.