

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -)
)
Paragon Defense Solutions, Inc.) ASBCA No. 64307
)
Under Contract No. SPE7L2-22-P-0710)

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 it \$26,846, 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 April 20, 2022, the government issued a unilateral purchase order to Paragon for 96 items described as "Parts, Kit, Seat" (kits) for \$168,000, to be delivered within 210 days; that is, by November 16, 2022.² Paragon never delivered any kits to the government, much less 96 kits by November 16, 2022.³ The government

¹ App. br. at 5; app. reply br. at 7.

² See R4, tab 1 at 1, 4; app. br. at 1 ¶ 1; gov't br. at 2 ¶ 5.

³ See app. br. at 1 ¶ 2, 3-4.

unilaterally issued Modification No. 1 on December 16, 2022; the modification states that “[s]ince that date”—November 16, 2022—“was not met, the Government’s offer to purchase has lapsed.”⁴ The modification further states that “the purchase order is hereby cancelled at no cost or liability to the Government.”⁵

DECISION

Both parties point to Federal Acquisition Regulation (FAR) Part 13 as the authority for the purchase order.⁶ Purchase orders have three distinct phases: (1) the offer, (2) the option contract, and (3) the completed purchase and sale contract. *DODS, Inc.*, ASBCA No. 57816, 12-2 BCA ¶ 35,082 at 172,287. 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.

Paragon says that it “fully manufactur[ed]” the 96 kits, and the government concedes that Paragon performed to the extent that an option contract was formed, binding the government “to keep its ‘offer’ open for the time stated in the offer.”⁷ However, by the November 16, 2022 contract delivery date, Paragon had not delivered any of the kits to the government, much less 96 kits; indeed, Paragon *never* delivered any of the kits to the government. Consequently, the option contract and the purchase order lapsed without the need for any action on the part of the government.

Paragon says that the government delayed Paragon’s performance through “mixed messaging” regarding the “only issue” allegedly affecting performance; that is, the location and legibility of part-identification markings.⁸ But Paragon does not demonstrate that the government was obligated to help Paragon resolve that issue. *See Precision Pine & Timber, Inc. v. United States*, 596 F.3d 817, 831 (Fed. Cir. 2010) (“The implied duty of good faith and fair dealing cannot expand a party’s contractual duties beyond those in the express contract . . .”). In addition, Paragon says that on December 12, 2022, it warned the government that Paragon “would have to assume

⁴ R4, tab 13 at 2.

⁵ R4, tab 13 at 2.

⁶ *See* app. br. at 2; ans. at 2 ¶ 5.

⁷ App. reply br. at 2 (alteration added); gov’t br. at 5.

⁸ App. br. at 1 ¶ 2, 3-4.

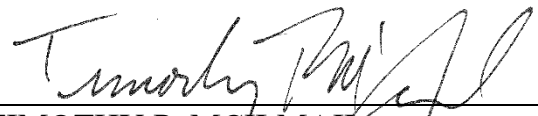
where to place the markings.”⁹ That warning is a concession that Paragon could have decided on its own how to label the kits, and could have labeled and delivered those kits by the November 16, 2022 delivery deadline. Paragon having failed to deliver the parts on time, the option contract lapsed, even if timely delivery of mislabeled parts would have also resulted in the option contract having lapsed.

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 19, 2025



TIMOTHY P. MCILMAIL
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. 64307, Appeal of Paragon Defense Solutions, Inc., rendered in conformance with the Board’s Charter.

Dated: November 19, 2025



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

⁹ App. reply br. at 4-5.