

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of - )  
 )  
Warfighter Defense, Inc. ) ASBCA Nos. 63908, 63909  
 )  
Under Contract No. SPE7M8-24-P-0890 )

APPEARANCE FOR THE APPELLANT: Mr. Andy Chavez  
President

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OPINION BY ADMINISTRATIVE JUDGE ARNETT  
ON THE GOVERNMENT'S MOTION TO DISMISS  
AND MOTION FOR SUMMARY JUDGMENT

Appellant Warfighter Defense Inc., (appellant or WFD) appeals from a contracting officer's final decision denying WFD's claim. The Defense Logistics Agency (DLA) has moved to dismiss the appeals for lack of jurisdiction, alleging that no contract was formed. WFD filed its opposition to DLA's motion. Pursuant to Federal Rule of Civil Procedure (FED. R. CIV. P.) 56(f) and because DLA relies upon matters outside the pleadings and asserts a lack of factual dispute, we notified the parties that we would address the motion, in the alternative, as one for summary judgment and afforded the parties an opportunity to respond.

Because WFD made a non-frivolous allegation that a contract exists between WFD and DLA, we deny DLA's motion to dismiss for lack of jurisdiction. However, we find that no contract was formed between DLA and WFD and, therefore, grant summary judgment in favor of DLA.

## STATEMENT OF FACTS (SOF) FOR PURPOSES OF THE MOTION

### The Request for Quotations (RFQ):

1. On February 2, 2024, DLA issued RFQ No. SPE7M8-24-T-2794 seeking offers to supply 700 pressure switches (*see generally* R4, tab 1 at 2, 7).<sup>1</sup> The RFQ identified the required pressure switches by National Stock Number (NSN) 5930010764114 and listed two approved sources: 1) Fasttrax Ltd (Fasstrax) CAGE KC7A1, Part Number (P/N) 52933AX; and 2) Bendix Commercial Vehicle Systems (Bendix) CAGE 06853 P/N K101996 (*id.* at 7).

2. The RFQ included a “Caution Notice” stating that offerors were required to comply with domestic material restrictions and indicated that the Buy American Act “may apply” (R4, tab 1 at 5). Further, it stated, “If your offer is based on a non-domestic material, you are required to provide disclosure information in your quote and/or through written notification to the point of contact listed in the solicitation.” (*id.*). The RFQ expressly stated, “DFARS 252.225-7001, BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM, applies to all quotes above the micro-purchase threshold” (*id.* at 4). At the time of issuance of the RFQ, the micro-purchase threshold was \$10,000. Federal Acquisition Regulation (FAR) 2.101. Defense Federal Acquisition Regulation Supplement (DFARS) 252.225-7001(c), BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM, provides that the contractor “shall deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American—Balance of Payments Program Certificate provision of the solicitation.” We find that any products delivered in response to the RFQ at issue were required to be domestic end products as defined at DFARS 252.225-7001.

3. The RFQ incorporated by reference the terms and conditions of the DLA Master Solicitation for Automated Simplified Acquisitions which included procurement notes (R4, tab 1 at 1; gov’t mot., ex. 2 at 1-6). Procurement Note C03, Contractor Retention of Supply Chain Traceability Documentation (JUN 2020), states:

(1) By submitting a quotation or offer, the contractor, if it is not the manufacturer of the item, is confirming it currently has, or will obtain before delivery, and shall retain documented evidence (supply chain traceability documentation), as described in paragraph (2) of this procurement note, **demonstrating the item is from the**

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<sup>1</sup> The government numbered its pages in its Rule 4 submission with leading zeros, which we omit here.

**approved manufacturer** and conforms to the technical requirements.

(2) At a minimum, the supply chain traceability documentation for the item shall include: basic item description, part number and/or national stock number, manufacturing source, manufacturing source's Commercial and Government Entity (CAGE) code, and clear identification of the name and location of all supply chain intermediaries between the manufacturer to the contractor to item(s) acceptance by the Government. The documentation should also include, if available, the manufacturer's batch identification for the item(s), such as date codes, lot codes, or serial numbers.

(Gov't mot., ex. 1 at 1) (emphasis added)

4. Procurement Note L04, Offers for Part Numbered Items (SEP 2016), states:

(a) For part numbered items, identified in the item description only by the name of an approved source (CAGE code), a part number, and a brief description.

Exact product –applies to contract line-item(s) (CLIN(s))

. . .

(b) **Exact product means a product described by the name of an approved source and its corresponding part number cited in the item description; and manufactured by, or under the direction of, that approved source.** An offeror of an exact product must meet one of the descriptions below.

(1) An approved source offering its part number cited in the item description;

(2) A dealer/distributor offering the product of an approved source and part number cited in the item description;

(3) A manufacturer who produces the offered item under the direction of an approved source; and has authorization

from that approved source to manufacture the item,  
identify it as that approved source's name and part number,  
and sell the item directly to the Government.

(Gov't mot., ex. 1 at 43-44) (emphasis added)

5. The RFQ also stated, "DESTINATION INSPECTION REQUIRED – FAR 52.246-2 APPLIES" (R4, tab 1 at 4). FAR clause 52.246-2 gives the government the right to "inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance." FAR 52.246-2(c).

Appellant's Quotations:

6. On February 5, 2024, WFD submitted a quotation to provide 700 pressure switches within 380 days for a total of \$31,500 (R4, tab 1a at 24). The quote was labelled "Bid without exception", proposed to provide an "Exact Product", and listed the CAGE Code as 06853 and P/N as K101996 (*id.* at 24-25). The CAGE Code and P/N in WFD's quote are the same as the CAGE Code and P/N for the Bendix pressure switches identified in the RFQ (R4, tab 1 at 7). The quotation included a "Buy American Act – Balance of Payments Program Certification" to which WFD responded, "Domestic End Products" (R4, tab 1a at 25).

7. On February 8, 2024, WFD submitted a revised quote to provide 700 units in 280 days for a total of \$31,500 (R4, tab 1b at 27). The quote was labelled "Bid without Exception" and proposed to provide an "Exact Product" with CAGE Code 06853 and P/N K101996 (*id.* at 27-28). We find that the CAGE Code and P/N in WFD's quote match the CAGE Code and P/N for the Bendix pressure switches in the RFQ (R4, tab 1 at 7). The revised quote included a "Buy American Act – Balance of Payments Program Certification" to which WFD responded, "Domestic End Products" (R4, tab 1b at 28).

8. In response to DLA's request for a better lead time, WFD indicated that it revised its quote and stated, "the PN we are quoting is 52933AX" (R4, tab 2 at 41). The revised quote was to provide 700 units in 220 days for a total of \$31,500 (R4, tab 1c at 30). The quote was labelled "Bid without Exception" and proposed to provide an "Exact Product" with CAGE KC7A1 and P/N 52933AX (*id.* at 30-31). The listed CAGE Code and P/N are the same as the CAGE Code and P/N for the Fasttrax pressure switches listed in the RFQ (R4, tab 1 at 7). The revised quote included a "Buy American Act – Balance of Payments Program Certification" to which WFD responded, "Domestic End Products" (R4, tab 1c at 31).

9. On February 23, 2024, DLA requested that WFD provide traceability “ALL the way back to the OEM” for the product in WFD’s February 22, 2024 quotation (R4, tab 2 at 40-41). In response, WFD stated that it was offering “the approved aftermarket part # 52933AX” and clarified that “[t]hese are not Bendix parts but carry the approved aftermarket part number” (*id.* at 40).

10. On February 26, 2024, WFD submitted a revised quote labelled “Bid without Exception” which offered to provide an “Exact Product” with CAGE KC7A1 and P/N 52933AX (R4, tab 1d at 33-34). We find that the CAGE Code and P/N correspond to the approved Fasttrax switches identified in the RFQ (R4, tab 1 at 7). The revised quote included a “Buy American Act – Balance of Payments Program Certification” to which WFD responded, “Non-Qualifying Country End Products” (R4, tab 1d at 34).

11. The February 26, 2024 quote included a part sold by Mixer & Plant Parts Mfg, LLC which used the same P/N as Fasttrax but the description stated, “Bendix 52933AX Brake Stop Light Pressure Switch Aftermarket Replacement” (R4, tab 6 at 86). The documentation did not trace the part from Mixer & Plant Parts Mfg, LLC to either of the two approved sources—Bendix or Fasttrax (*id.*).

DLA’s Purchase Order:

12. On February 27, 2024, DLA issued a firm fixed-price Purchase Order No. SPE7M8-24-P-0890 (the Purchase Order) for 700 pressure switches (R4, tab 7 at 87-88). It referenced WFD’s quote dated February 5, 2024 (*id.* at 87). The scheduled delivery date was April 29, 2024 (*id.* at 88). The Purchase Order restated the two approved sources: 1) Fasttrax CAGE KC7A1, P/N 52933AX; and 2) Bendix CAGE 06853 P/N K101996 (*id.*). It also referenced Procurement Note C03, Contractor Retention of Supply Chain Traceability Documentation and DFARS 252.225-7001, BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM – BASIC (JAN 2023) (*id.* at 90, 93).

13. Block 16 of the Purchase Order included a blank where, if required, the contractor could accept, in writing, the government’s offer. It stated, “ACCEPTANCE. THE CONTRACTOR HEREBY ACCEPTS THE OFFER REPRESENTED BY THE NUMBERED PURCHASE ORDER AS IT MAY PREVIOUSLY HAVE BEEN OR IS NOW MODIFIED, SUBJECT TO ALL OF THE TERMS AND CONDITIONS SET FORTH, AND AGREES TO PERFORM THE SAME.” (*Id.* at 87) However, the box requiring written acceptance was not checked (*id.*). The Purchase Order did not require WFD to execute it, and WFD did not do so.

WFD's Response to DLA's Purchase Order:

14. On February 27, 2024, WFD emailed DLA stating:

Thank you for awarding Warfighter Defense (WFD) the contract for the pressure switch NSN 5930010764114. We are excited to begin working on this project. Before we proceed with ordering the parts from our supplier, MP Parts, as these are not eligible for return, we would like to respectfully confirm the following critical details:

- Aftermarket Part Acceptance: **Please confirm that DLA is accepting the aftermarket part number, 52933AX, as quoted by MP Parts to WFD. This part is manufactured in China.**
- CAGE Code Discrepancy: DLA's system associates the provided part number, 52933AX, with the CAGE Code KC7A1, belonging to a UK-based logistics company, Fasttrax. As Fasttrax does not manufacture this part, please clarify which CAGE code should be used on the mil-spec label if the aftermarket part is accepted

(R4, tab 2 at 38-39) (emphasis added) WFD's response identified an "aftermarket" part that was manufactured in China (*id.*).

15. We find that WFD's response deviated from DLA's offer to buy 700 units of the "exact product" associated with either approved source—Fasstrax or Bendix. We also note that a product manufactured in China is not a "domestic end product" as defined at DFARS 252.225-1001 and is not consistent with the requirements of the RFQ.

Correspondence and WFD's Claim:

16. In early March 2024, the parties exchanged numerous emails regarding the product quoted by WFD and DLA's request that WFD trace the proposed product to demonstrate compliance with DLA's Purchase Order offer (R4, tab 4 at 55-64).

17. On March 8, 2024, DLA Contract Administrator Mr. Danny Dickerson (Mr. Dickerson) indicated that he had found "nothing" indicating that DLA had approved the aftermarket parts and stated that the product quoted did not appear to be acceptable because it originated in China and the order was subject to the Buy

American Act (*id.* at 65). WFD responded that the National Stock Number (NSN) in question “encompasses both the Bendix OEM part and the quoted Bendix aftermarket part number 52933AX and asserted that the parts were “functionally interchangeable and fully compliant” (R4, tab 5 at 80). In a second email the same day, Mr. Dickerson indicated that WFD had three options: 1) send conforming parts and traceability documentation to show that the parts are made by one of the two approved sources; 2) send traceability documentation showing the origin of the aftermarket parts so DLA could perform a technical review; or 3) request a no cost cancellation (R4, tab 2 at 36).

18. On March 12, 2024,<sup>2</sup> WFD submitted a claim under the Contract Disputes Act (R4, tab 8). The claim “reserve[d] the right to seek contractual damages for additional costs, administrative burdens, and potential lost profits caused by DLA’s unjustified delays and actions” but did not specify the amount of any additional costs incurred or sought (*id.* at 103).

19. On March 27, 2024, DLA cited WFD’s February 26, 2024 quote indicating that it was quoting the “exact product” associated with CAGE Code KC7A1 PN: 52933AX and requested that WFD provide traceability of the quoted product as required by Procurement Note C03 (R4, tab 4 at 57-59). DLA indicated that it would withdraw the Purchase Order if WFD failed to “provide acceptable post award traceability by 4/3/2024” (R4, tab 5 at 72). On March 27, 2024, WFD responded, **“Consider this my final communication regarding Purchase Order SPE7M8-24-P-0890. We have already provided the requested traceability documentation for the part number . . . We will not be providing any further information. If DLA is unwilling to accept the previously submitted documentation, then cancel the order immediately.”** (*Id.* at 71) (emphasis in original).

20. We find no evidence that DLA accepted the product proposed by WFD on February 27, 2024.

*Cancellation of the Purchase Order and Issuance of a Final Decision:*

21. On March 30, 2024, DLA canceled the Purchase Order by executing Modification No. P00001 which “remove[d] the rejected order” from its procurement system and de-obligated the full value of the Purchase Order (R4, tab 9 at 105-06).

22. We find no evidence that WFD delivered or attempted to deliver any pressure switches to DLA by the delivery date of April 29, 2024.

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<sup>2</sup> While the claim appears to be undated, the Contracting Officer’s Final Decision states that the claim was filed by letter dated March 12, 2024 (R4, tab 10 at 107).

23. On May 15, 2024,<sup>3</sup> the Contracting Officer issued a final decision denying WFD's claim (R4, tab 10 at 107-12).

WFD Appeals:

24. On May 15, 2024, WFD filed two separate (though largely identical) notices with the Board appealing both the contracting officer's final decision on its claim and the alleged termination of the contract. The notices alleged that a contract had been awarded, that WFD "attempted to commence performance", and that DLA unilaterally terminated the contract. The appeal of the alleged termination sought unspecified damages and was docketed as ASBCA No. 63908; the appeal of the denial of the claim for unstated damages was docketed as ASBCA No. 63909. The appeals have been consolidated.

25. WFD's notice of appeal and complaint both reference a purported contract number and allege that a contract existed between the parties and was terminated. WFD's complaint requests a finding that DLA materially breached the contract, an order directing DLA to reinstate the Contract and accept the aftermarket part as a "compliant and acceptable substitute for the OEM part", award of unspecified monetary damages including lost profits, consequential damages such as "lost business opportunities, reputational harm, and increased administrative expenses", and legal fees and expenses (compl. at 27).

DECISION

I. The Parties' Contentions:

DLA argues that we do not possess jurisdiction to hear these appeals because no contract exists between the parties (gov't mot. at 1). DLA contends that it offered to purchase 700 pressure switches from either one of the two approved sources and that WFD's response was a rejection and counteroffer to provide an aftermarket part which DLA declined to accept (*id.* at 5, 11). DLA asserts that, in the absence of an enforceable contract, the Contract Disputes Act (CDA) is inapplicable and the Board lacks jurisdiction (*id.* at 13). Alternatively, DLA argues that the undisputed facts show that the Purchase Order was never accepted "through performance or written notice" and WFD rejected DLA's Purchase Order when it made its counteroffer (gov't reply at 3-4). Finally, DLA asserts that WFD's statement that DLA should cancel the order immediately if DLA would not accept WFD's documentation serves as an "express rejection of DLA's offer and a directive to cancel" the Purchase Order (*id.* at 4).

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<sup>3</sup> While the Contracting Officer's Final Decision is also undated, the Notice of Appeal indicates that the Decision was transmitted via email to WFD on May 15, 2024.



In its initial response to DLA's Motion to Dismiss filed on January 13, 2025, WFD asserts that the motion is "procedurally improper and factually inaccurate" (app. opp. at 1) WFD contends that it made a "transparent communication regarding the use of the aftermarket part" and accuses DLA of a "bait-and-switch maneuver, awarding the contract without qualification, only to subsequently and arbitrarily revoke its acceptance based on unfounded allegations of non-compliance" (*id.* at 2). In its response to DLA's Motion for Summary Judgment filed August 11, 2025, WFD acknowledges that the RFQ listed two approved sources but contends that other sources could meet the quality standards and that the government's removal of the Fasttrax product from a subsequent solicitation is a "tacit admission" that Fasttrax was not a valid source (app. resp. at 2-3). WFD argues that it included a link to the supplier's website in its February 23, 2024 quote which put DLA on notice of the product that WFD was quoting and explicitly requested acceptance of the proposed product (*id.* at 4). WFD alleges that whether the product was "unapproved" and "aftermarket" is a disputed material fact (*id.* at 7). WFD contends that DLA's "subsequent failure to either accept or reject the offer [WFD's February 23, 2024 quote], followed by its unconditional award of the contract [issuance of the Purchase Order], constitutes a waiver of any objection and created a valid, binding agreement" (*id.*).

## *II. Motion to Dismiss:*

WFD bears the burden of proving the Board's jurisdiction by a preponderance of the evidence. *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988). We accept uncontroverted factual allegations as true for purposes of deciding motions to dismiss for lack of jurisdiction, and "other facts underlying the jurisdictional allegations are subject to fact-finding" based upon our review of the record. *L-3 Commc'ns Integrated Sys., L.P.*, ASBCA Nos. 60713, 60716, 17-1 BCA ¶ 36,865 at 179,625.

Under the Contract Disputes Act (CDA), we possess jurisdiction to "decide any appeal from a decision of a contracting officer of the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, or the National Aeronautics and Space Administration relative to a contract made by that department or agency." 41 U.S.C. § 7105(e)(1)(A). To establish our jurisdiction, WFD need not prove that a contract actually exists, which would be a decision on the merits. *See Avue Techs. Corp. v. Sec'y of Health & Hum. Servs.*, 96 F.4th 1340, 1344 (Fed. Cir. 2024) (citing *Engage Learning, Inc. v. Salazar*, 660 F.3d 1346, 1353 (Fed. Cir. 2011)); *Tele-Consultants, Inc.*, ASBCA No. 58129, 13-1 BCA ¶ 35,234 at 172,994. Rather, our jurisdictional inquiry is limited to determining whether WFD made a non-frivolous allegation that a contract exists between it and DLA. *See Avue*, 96 F.4th at 1344-45.

This burden is quite low. *See Warfighter Def. Inc.*, ASBCA No. 63924, 25-1 BCA ¶ 38,863 at 189,135; *Anis Avasta Constr. Co.*, ASBCA No. 61107, 17-1 BCA ¶ 36,838 at 179,517 fn.2. We have found this jurisdictional burden satisfied by a non-frivolous allegation of a contract. *See Anis Avasta*, 17-1 BCA ¶ 36,838 at 179,517 n.2 (burden satisfied by complaint allegation that appellant received contract award, notice to proceed, and direction to start work); *R&R Sys. Sols., LLC*, ASBCA Nos. 61269, 61405, 19-1 BCA ¶ 37,269 at 181,358 (burden satisfied by two notices of appeal asserting existence of a contract; one included a copy of the contract and the second included a copy of a contracting officer's final decision); *Black Tiger Co.*, ASBCA No. 59189, 16-1 BCA ¶ 36,423 at 177,570-71 (burden satisfied where notice of appeal included a contract number, a form identifying appellant as contractor, and a purported invoice).

Here, WFD's May 15, 2024 notice of appeal provided a purported contract number and alleged that a contract had been awarded, that WFD "attempted to commence performance", and that the contract was unilaterally terminated by DLA (SOF ¶¶ 24-25). The complaint also identified a purported contract number and alleged that DLA had awarded a contract to WFD and then breached the contract (SOF ¶ 25).

Therefore, we determine that WFD made a non-frivolous allegation of a contract and deny DLA's motion to dismiss for lack of jurisdiction.

### III. Motion for Summary Judgment:

Summary judgment should be granted if it has been shown that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). All significant doubt over factual issues must be resolved in favor of the party opposing summary judgment. *Mingus Constructors, Inc., v. United States*, 812 F.2d 1387, 1390 (Fed. Cir. 1987) (citing *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962)). Our job is not "to weigh the evidence and determine the truth of the matter," but rather to ascertain whether material facts are disputed and whether there exists any genuine issue for trial." *Holmes & Narver Constructors, Inc.*, ASBCA Nos. 52429, 52551, 02-1 BCA ¶ 31,849 at 157,393 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)).

The non-movant must show an "evidentiary conflict on the record; mere denials or conclusory statements are not sufficient" to defeat a motion for summary judgment. *Mingus*, 812 F.2d at 1390-91. The non-movant "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., Ltd., v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). If "the record taken as a whole could not lead a rational trier of fact to find for the [non-movant], there is

no ‘genuine issue for trial.’” *Id.* at 587 (quoting *First Nat’l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 289 (1968)).

*There are no material facts in dispute concerning DLA’s issuance of the Purchase Order.*

In response to the RFQ, WFD submitted multiple quotations (SOF ¶¶ 6-11). Following submission of those quotations, DLA issued a Purchase Order (SOF ¶ 12). The parties largely agree upon the sequence of events including the documents and communications exchanged but differ as to their legal significance. WFD characterizes its quotations as offers, asserts that DLA was on notice of the precise aftermarket product that WFD was quoting, and alleges that DLA accepted WFD’s offer to provide the quoted product (app. resp. at 7). We disagree with WFD’s application of the law to the facts.

FAR part 13 governs acquisitions (including purchase orders) under the simplified acquisition threshold of \$250,000. When the solicitation is an RFQ, the contractor’s response is a quotation. A quotation is not an offer and cannot be accepted to form a binding contract. *See* FAR 13.004(a); *see also* FAR 2.101 (definitions of solicitation and offer). Instead, the offer arises only when the government responds to the quotation through issuance of a purchase order. Thus, a contract only arises when the contractor accepts the government’s offer. *Warfighter Def. Inc.*, 25-1 BCA ¶ 38,863 at 189,136 citing FAR 13.004(a); FAR 2.101 (definition of purchase order). If requested by the contracting officer, the contractor may indicate acceptance by notifying the government. Furnishing the supplies ordered or “proceeding with the work to the point where substantial performance has occurred” may also demonstrate acceptance. FAR 13.004(b). At any time before acceptance occurs, the government may withdraw or cancel its offer by written notice to the supplier. FAR 13.004(c).

Here, WFD’s quotations were not offers. Pursuant to FAR 13.004(a), the offer only arises when the government responds to a quotation. Thus, we conclude that DLA’s Purchase Order was an offer to buy 700 pressure switches from one of the two approved sources—Fasstrax or Bendix.

*There are no material facts in dispute about WFD’s response to the Purchase Order.*

WFD could have accepted the Purchase Order through performance—by supplying the specified pressure switches from either approved source (Fasstrax or Bendix) by the delivery date of April 29, 2024. However, WFD did not do that. Instead, WFD promptly requested confirmation that DLA would accept an aftermarket part manufactured in China (SOF ¶ 14). We have found that WFD’s response differed from the terms of DLA’s offer (SOF ¶ 15). While WFD disputes that its response was

a “rejection”, we cannot interpret it as acceptance. *See Warfighter Def. Inc.*, 25-1 BCA ¶ 38,863 at 189,136-37.

“A reply to an offer which purports to accept it but is conditional on the offeror’s assent to terms additional to or different from those offered is not an acceptance but is a counter-offer.” *Herman JCG Co. JV*, ASBCA No. 63235, 24-1 BCA ¶ 38,587 at 187,574-75; *First Com. Corp. v. United States*, 335 F.3d 1373, 1381 (Fed. Cir. 2003) (quoting RESTATEMENT (SECOND) OF CONTRACTS § 59 (1979)). “[A]cceptance . . . to be effectual, must be unqualified, absolute, unconditional, unequivocal, unambiguous, positive, without reservation, and according to the terms or conditions of the option.” *Cooper/Ports Am., LLC v. Sec’y of Def.*, 959 F.3d 1373, 1377 (Fed. Cir. 2020) (quoting *Holly Corp.*, ASBCA No. 24975, 83-1 BCA ¶ 16,327 at 81,165).

Here, WFD proposed alternate terms—an aftermarket product manufactured in China and lacking traceability to either of the two approved sources. Although WFD now attempts to dispute that the product was “aftermarket” (app. resp. at 7), WFD identified the product as “aftermarket” in its own contemporaneous correspondence (SOF ¶¶ 9, 14). Thus, we conclude that WFD’s response was a counter-offer and did not bind either party. There is no genuine issue of material fact in dispute that the product proposed by WFD was not a domestic product from one of the two approved sources consistent with DLA’s offer.

*There are no material facts in dispute about DLA’s response to WFD’s counter-offer.*

Had DLA been willing to accept the proposed alternate product, DLA might have accepted WFD’s counter-offer. In fact, DLA explained to WFD the traceability information needed for DLA to evaluate the counter-offer or WFD could request a “no-cost cancellation” (SOF ¶ 17). The requirements for domestic pressure switches with traceability to one of the two approved sources were set forth in both the RFQ and the Purchase Order (SOF ¶¶ 1-4, 12). All four WFD quotes proposed to provide the “Exact Product” bid without exception and three of the four WFD quotes indicated that the products proposed were “domestic end products” (SOF ¶¶ 6-8, 10). This is a contemporaneous acknowledgement of these requirements.

While WFD argues that other sources “could meet” the quality standards and that DLA’s removal of the Fasstrax product from a subsequent solicitation is a “tacit admission” that it was not a valid source (app. resp. at 2-3), we find these to be conclusory statements, unsupported by any evidence. DLA was entitled to strict compliance with the stated requirements even if other products might have been suitable. *Relyant, LLC*, ASBCA No. 59809, 18-1 BCA ¶ 37,085 at 180,537. WFD acknowledges the approved sources identified in the RFQ (app. resp. at 2).

Rather than provide the requested traceability information for DLA to evaluate WFD's counter-offer, WFD declined to provide "any further information" and requested that DLA "cancel the order immediately" if DLA would not accept the previously submitted information (SOF ¶ 19). The record establishes that there are no material facts in dispute concerning DLA's rejection of WFD's counter-offer.

*DLA Exercised its Right Under FAR 13.004(c) and Cancelled the Purchase Order.*

Pursuant to FAR 13.004(c), the government could withdraw or cancel its offer, by written notice to the supplier, at any time before acceptance. A counter-offer ordinarily terminates the power of acceptance of the original offeree.

RESTATEMENT (SECOND) OF CONTRACTS § 39. We conclude that WFD's ability to accept DLA's Purchase Order was likely foreclosed by WFD's counter-offer and have found no evidence that WFD attempted to accept the Purchase Order either in writing or through performance (SOF ¶¶ 13-15, 20, 22). Consistent with WFD's request (SOF ¶ 19), DLA cancelled the Purchase Order on March 30, 2024 (SOF ¶ 21).

Thus, there are no genuine issues of material fact in dispute regarding the lack of a binding contract under FAR 13.004. This was simply an exchange of offers that never resulted in an agreement. Without a contract, there is no breach, termination, or associated damages.<sup>4</sup> The record taken as a whole could not lead a rational trier of fact to find in favor of WFD. *See Matsushita*, 475 U.S. at 587. Accordingly, DLA is entitled to judgment as a matter of law.

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<sup>4</sup> One remedy sought by WFD is reinstatement of a contract. Even if we determined that a contract had been formed between DLA and WFD, which we do not, we could not provide the requested relief because we lack jurisdiction to grant specific performance. *SBA Contracting, LLC*, ASBCA No. 63320, 23-1 BCA ¶ 38,443 at 186,849.

CONCLUSION

DLA's motion to dismiss is denied. We grant summary judgment in favor of the government. The appeals are denied.

Dated: December 11, 2025



LAURA J. ARNETT  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur



OWEN C. WILSON  
Administrative Judge  
Acting Chairman  
Armed Services Board  
of Contract Appeals

I concur



J. REID PROUTY  
Administrative Judge  
Vice Chairman  
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 Nos. 63908, 63909, Appeals of Warfighter Defense, Inc., rendered in conformance with the Board's Charter.

Dated: December 11, 2025



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