

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -)
)
Paragon Defense Solutions, Inc.) ASBCA No. 64310
)
Under Contract No. SPE7M2-23-P-0321)

APPEARANCE FOR THE APPELLANT: Mr. Weiwei Jian
President

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

Paragon Defense Solutions, Inc. (Paragon) appeals a deemed denial of its claim concerning the cancellation of a purchase order issued by the Defense Logistics Agency (DLA). Paragon seeks \$4,998 in lost profits due to this cancellation. DLA argues it canceled the purchase order because Paragon intended to utilize an ineligible manufacturer, thereby rejecting the terms of the government’s offer.

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 November 1, 2022, DLA issued a purchase order to Paragon for 147 tube couplings for a total of \$27,048. Paragon was to deliver the supplies no later than 150 days after issuance of the purchase order, or by March 31, 2023. (R4, tab 1 at 1, 5)
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. The purchase order referenced Paragon's offer/quotation dated October 19, 2022 (R4, tab 1 at 1)

3. As relevant here, the purchase order included in section B and in full text technical quality requirement RQ032, Export Control of Technical Data, which explains the item has some technical data subject to the International Traffic in Arms Regulations or Export Administration Regulations and cannot be exported without certain prior authorizations. The requirement explains that distribution of export controlled technical data is limited to contractors that have an approved US/Canada Joint Certification Program (JCP) certification, have completed certain training, and been approved by the DLA controlling authority. Further, the requirement instructs:

To be eligible for award, offerors and any sources of supply proposed for use are required to have an approved JCP certification and have been approved by the DLA controlling authority to access export-controlled data managed by DLA. DLA will not delay award in order for an offeror or its supplier to apply for and receive approval by the DLA controlling authority to access the export-controlled data.

(R4, tab 1 at 4)

4. In addition, 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, the purchase order incorporated by reference Federal Acquisition Regulation (FAR) 52.213-4, TERMS AND CONDITIONS-SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES) (JAN 2022) (R4, tab 1a at 21).

5. The purchase order also incorporated by reference FAR 52.215-8, ORDER OF PRECEDENCE - UNIFORM CONTRACT FORMAT (OCT 1997) (R4, tab 1 at 9). That FAR clause states that any inconsistency shall be resolved by providing precedence in the following order: schedule; representations and instructions; contract clauses; other documents, exhibits, and attachments; and the specifications. FAR 52.215-8.

6. On March 15, 2023, the DLA contracting officer emailed Paragon and stated the quotation Paragon submitted indicated MEPAG RUP SAVUNMA ANONIM SIRKETI would be the manufacturing source for the parts. The contracting officer requested confirmation that Paragon would provide traceability documents showing Paragon requested the manufacturer start making the parts. In addition, if Paragon intended to utilize a different manufacturer, the contracting officer requested the name and other identifying information. (R4, tab 4 at 143-44)

7. That same day, Paragon responded, indicated it intended to use the same manufacturer, and provided a copy of a purchase order it issued to the manufacturer dated November 1, 2022 (R4, tabs 4 at 143, 4a at 145). The purchase order identified the manufacturer's location of Ankara, Turkey (R4, tab 4a at 145).

8. On March 17, 2023, the contracting officer issued a modification cancelling the purchase order (R4, tabs 6-7). According to the modification, Paragon's quotation did not comply with the solicitation requirements set forth in RQ032, Export Control of Technical Data, and therefore was unacceptable and ineligible for award. In addition, the modification stated that Paragon had confirmed in its March 15, 2023 email that the manufacturer did not meet the requirements. (R4, tab 7 at 150) Specifically, the manufacturer was a foreign source which was in direct violation of the export control requirements (R4, tab 6). In other words, the manufacturer did not meet the JCP certification or DLA controlling authority approval requirements (R4, tab 9 at 152-53).

9. On May 30, 2025, Paragon submitted a claim stating that its quotation identified the manufacturer to be used and DLA knowingly accepted Paragon's use of this manufacturer during its technical evaluation (R4, tab 10a at 155). Paragon also argued DLA was required to provide a cure notice, and breached the duty of good faith and fair dealing. Paragon sought \$4,998 in anticipated profits. (R4, tab 10a at 156)

10. On April 7, 2025, DLA proposed Paragon's manufacturer for debarment (R4, tab 12).

DECISION

Paragon argues that DLA's cancellation of the purchase order without a show cause or cure notice amounted to an improper termination for default which must be converted to one for convenience (app. br. at 2-3). According to Paragon, a contract was formed when it issued an order to its manufacturer to begin production (app. reply br. at 2). Paragon also argues that since it disclosed its manufacturer before and after award, DLA awarded with this knowledge, DLA waived the right to cancel the award and the cancellation was a breach of good faith and fair dealing (app. br. at 3; app. reply br. at 3). Paragon argues Defense Federal Acquisition Regulation Supplement 252.225-7048 governs the handling of export controlled items and does not require JCP certification (app. br. at 3).

DLA argues the purchase order here was a unilateral offer which Paragon rejected by intending to use an ineligible manufacturer (gov't resp. br. at 6-7). DLA further argues Paragon's proposed use of this ineligible manufacturer was a counter-offer, which DLA rejected because it required strict compliance with the terms of the purchase order, especially regarding the export control requirements (gov't resp. br. at 7-8).

The purchase order was issued pursuant to FAR Part 13 (finding 4). Pursuant to FAR Part 13, when an agency issues a request for quotations, such as here, the contractor's response is a quotation, which cannot be accepted by the government to form a binding contract. *See* FAR 13.004(a); *see also* FAR 2.101 (definitions of solicitation and offer). Rather, the offer is the government's purchase order, issued to a supplier, "to buy certain supplies or services upon specified terms and conditions." FAR 13.004(a). 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(b).

Here, DLA issued Paragon a purchase order, which Paragon did not sign, or accept in writing (finding 2). In fact, there was no acceptance here by Paragon at all. In this regard, the purchase order included mandatory requirements for export control of technical data (finding 3).¹ Paragon intended to use a manufacturer that did not meet these requirements (finding 7) and does not dispute this fact (app. br. at 3). As such, rather than accept the terms and conditions of the purchase order, Paragon rejected them, and counter-offered. *See Warfighter Def. Inc.*, ASBCA No. 63924, 25-1 BCA ¶ 38,863 at 189,137 (numerous requests for waiver of purchase order's inspection requirement constituted rejection and counter-offer). The fact that Paragon initially intended to use an ineligible manufacturer, and then later confirmed this fact only supports the conclusion that Paragon rejected DLA's offer with its counter-offer.

The FAR states that at any time before acceptance the government may withdraw, amend, or cancel its offer. FAR 13.004(c). There was no acceptance by DLA; rather, DLA rejected the counter-offer and canceled its offer.²

¹ Pursuant to FAR 52.215-8, ORDER OF PRECEDENCE-UNIFORM CONTRACT FORMAT (OCT 1997) the RQ032 requirement for the part takes precedence over any attachment to the order (finding 5). The purchase order here references Paragon's quotation but it is not clear it actually incorporated it by reference (finding 2). Regardless, even if one were to find the purchase order incorporated by reference Paragon's offer dated October 19, 2020, which the parties agree identified the foreign manufacturer, the purchase order nonetheless required compliance with RQ032.

² We have considered all of Paragon's other arguments, although we may not address them here, and conclude there is no basis to find entitlement for Paragon.

CONCLUSION

For the foregoing reasons, the appeal is denied.

Dated: November 24, 2025



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. 64310, Appeal of Paragon Defense Solutions, Inc., rendered in conformance with the Board's Charter.

Dated: November 25, 2025



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