

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -)
)
Paragon Defense Solutions) ASBCA No. 64297
)
Under Contract No. SPE7M1-21-D-5005)

APPEARANCE FOR THE APPELLANT: Mr. Weiwei Jian
President

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OPINION BY ADMINISTRATIVE JUDGE EYESTER

This appeal concerns the termination for default by the Defense Logistics Agency (DLA) of three delivery orders issued to Paragon Defense Solutions, Inc. (Paragon) pursuant to the above-referenced contract. DLA contends it properly terminated the orders because Paragon failed to supply flange-to-hose elbows by the required delivery dates. In response, Paragon argues DLA waived the delivery date.

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 December 10, 2020, DLA issued a three-year indefinite delivery contract, Contract No. SPE7M1-21-D-5005, to Unimex Corporation doing business as

Buffer Zone¹ for flange-to-hose elbows, with a maximum value of \$249,999.99 (R4, tab 1 at 1-3). For all orders issued pursuant to the contract, the required delivery date was 150 days after award (*id.* at 3). Inspection and acceptance of the items would occur at “origin.” Specifically, the inspection point was Paragon’s main warehouse in Danville, Indiana. (*Id.* at 4)

2. The contract incorporated by reference Federal Acquisition Regulation (FAR) 52.204-13, SYSTEM FOR AWARD MANAGEMENT [(SAM)] MAINTENANCE (OCT 2018) (R4, tab 1 at 9). That FAR clause required Paragon maintain an accurate registration in SAM, which included all mandatory information such as a Commercial and Government Entity (CAGE) code. FAR 52.204-13(a)(1), (c). Similarly, the contract incorporated by reference FAR 52.204-18, COMMERCIAL AND GOVERNMENT ENTITY CODE MAINTENANCE (AUG 2020) (R4, tab 1 at 9). According to that clause, Paragon was to ensure its CAGE code was maintained throughout the life of the contract and notify the contracting officer of any change to the CAGE code “within 30 days after the change, so that a modification can be issued to update the [] code on the contract.” FAR 52.204-18(b).

3. The contract also incorporated by reference FAR 52.249-8, DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984) (R4, tab 1 at 27). According to the default clause, the government may terminate a contract in whole or part if the contractor fails to deliver the supplies within any time specific in the contract or extension. FAR 52.249-8(a)(1)(i). The contract also included FAR 52.213-4, TERMS AND CONDITIONS-SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (OCT 2020) (R4, tab 1 at 10). That clause states the government may terminate the contract for cause “in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions” and in such event “the Government shall not be liable to the Contractor for any amount for supplies or services not accepted” (*id.* at 12 (quoting FAR 52.213-4(g))). The same clause states that the contractor will be liable for default “unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers” (*id.* (quoting FAR 52.213-4(e))).

4. On April 16, 2021, Paragon issued a purchase order to a manufacturer for 250 flange-to-hose elbows with a width of .065, with a delivery date of August 13, 2021 (app. supp. R4, tab 1). The manufacturer acknowledged the order on May 2,

¹ By at least February 9, 2023, DLA recognized Paragon doing business as Buffer Zone as the contractor (*see* R4, tab 6 at 137 (modification showing Paragon as the contractor)).

2021 and listed the ship date as August 10, 2021 (app. supp. R4, tab 2). The manufacturer packed the products on September 1, 2021 and a quality engineer signed a certificate of compliance on September 14, 2021 (app. supp. R4, tab 3). Paragon provided an unsigned bill of lading, dated September 1, 2021, showing the manufacturer was to ship three pallets to Paragon (app. supp. R4, tab 4). As the bill of lading is unsigned, and predates the certificate of compliance, and Paragon failed to provide any evidence showing it paid for the supplies, we find this does not provide any evidence the items were actually shipped by the manufacturer or received by Paragon.

5. On August 9, 2021, pursuant to Paragon's request, DLA modified the contract to change the wall thickness of the item to a width of .065 (R4, tabs 2-5).

6. On August 10, 2022, DLA issued an order (delivery order 1) for 24 flange-to-hose elbows for a total of \$5,685.60 with a delivery date of January 9, 2023 (R4, tab 11 at 146-47). On September 14, 2022, DLA issued an order (delivery order 2) for 21 flange-to-hose elbows in the amount of \$4,974.90 with a delivery date of February 13, 2023 (R4, tab 24 at 174-75). On September 16, 2022, DLA issued another order (delivery order 3) for 21 flange-to-hose elbows in the amount of \$4,974.90 with a delivery date of February 13, 2023 (R4, tab 33 at 197-98).

7. On January 5, 2023, Paragon requested an extension of 90 days for all three orders because it had relocated its warehouse and the associated address for the CAGE code had not been updated yet in SAM (R4, tab 14 at 151). Paragon requested this extension only four days before its due date for delivery order 1.

8. On February 8, 2023, the contracting officer emailed Paragon explaining that although DLA Land and Maritime awarded the contract and orders, the contract required inspection/acceptance at origin and with Defense Contract Management Agency (DCMA) administration. The contracting officer requested clarification regarding the inspection/acceptance location, stating he was "not aware of any issues with the CAGE address in SAM" and noting the contract's Danville, Indiana location. The contracting officer further stated:

If the [Danville inspection/acceptance] ORIGIN location is correct, let me know and I will issue modifications to all three delivery orders to delegate administration to DCMA and extend the [contract delivery dates] on all three delivery orders to 03/15/23, due to Government error and delay, which will allow ample time for inspection and delivery of the parts. A modification has also been requested for the basic [contract] to delegate administration to DCMA for future delivery orders.

Please reply at your earliest convenience to confirm the [inspection/acceptance] location. Once I receive your reply, I will then issue the required modifications on the three delivery orders.

(R4, tab 15 at 153) We find that the contracting officer did not modify the due dates and did not intend to modify the due dates until receiving confirmation that the inspection/acceptance location remained the Danville, Indiana location. Further, we find the contracting officer's reference to any government error and delay related to DCMA involvement.

9. On February 8, 2023, Paragon responded, seeking a change to the inspection/acceptance point to a new warehouse location, which did not have a CAGE code. Paragon again requested an extension of 90 days because it was not clear how long it would take DCMA to review documents and perform an onsite inspection. (R4, tab 16 at 155-56)

10. On February 17, 2023, DLA informed Paragon that a new inspection and acceptance at origin location could not be entered into the system without identifying a CAGE code for that specific location. DLA explained that it could not modify the contract to change the inspection/acceptance location to Paragon's new warehouse without a CAGE code. DLA requested Paragon provide documentation of the CAGE code application for the new warehouse showing that Paragon actually requested a CAGE code. DLA told Paragon all documents were due by February 21, 2023 at 4:00 pm Eastern Standard Time. DLA stated that if Paragon did not reply or the response was unacceptable, DLA could withdraw the delivery orders. (R4, tab 16 at 155)

11. In addition, DLA informed Paragon that all three due dates for the delivery orders had lapsed. DLA therefore requested traceability documents such as invoices, showing the supplies were in Paragon's possession and ready for inspection prior to the delivery date. (R4, tab 16 at 155) Again, DLA did not change the due date. And Paragon still failed to deliver the supplies by the required due dates.

12. DLA never received the requested documents. Paragon was proposed for debarment on February 27, 2023. (R4, tab 14 at 152)

13. On March 6, 2023, DLA issued modifications cancelling the three orders because Paragon failed to meet the delivery dates and therefore the government's offer to purchase had lapsed. DLA canceled the orders at no cost or liability to the government. The modifications stated that "[N]o deliveries will be accepted by the Government under this order" for the items. (R4, tabs 18, 28, 34) The modifications

also stated that due to Paragon's proposed debarment, and in the absence of the agency head issuing a written determination of compelling reasons for extending the duration of the order, the order is withdrawn pursuant to FAR 9.405-1(a)(2) (R4, tabs 18, 28, 34). The modifications referenced the contracting officer's February 17, 2023 email and FAR 9.405-1(a)(2) (R4, tab 18 at 1; tab 28 at 1; tab 34 at 1).

14. On March 10, 2023, Paragon emailed DLA stating that it had requested extensions for the terminated delivery orders, informed DLA that it had relocated its warehouse and needed to update its CAGE code, and would be working with the local DCMA office to find a solution for the inspection difficulty. Paragon also stated that a DCMA representative had inspected the parts on March 7, 2022 and verbally accepted them. Paragon requested DLA rescind the cancellations. (R4, tab 8 at 141) DLA responded that same day reminding Paragon that DLA had requested certain documents and Paragon failed to provide any documents by the requested date. DLA stated it would not reinstate the orders. (*Id.* at 140)

15. On May 24, 2025, Paragon submitted a claim for the three orders seeking \$5,685.60 for delivery order 1, \$4,974.90 for delivery order 2, and \$4,974.90 for delivery order 3 (R4, tab 10). Paragon argued that at the time of termination, it had procured all of the material and prepared them for inspection and delivery. Paragon contends it requested an extension due to its warehouse relocation and need to update the CAGE code in SAM, factors it considered outside of its control. Paragon also argued DLA was required to issue a cure or show cause notice. (*Id.* at 144)

DECISION

Paragon argues the contracting officer expressly waived the delivery date and extended them through March 15, 2023 and the reliance of DLA on FAR 9.405 (debarment) was a pretext (app. br. at 4-6; app. reply at 1-2). For these reasons, Paragon argues the termination for default² must be converted to a termination for convenience, and the Board should award Paragon the entire disputed amount of \$15,635.40 plus interest (app. br. at 5-6).

DLA contends Paragon failed to meet the required delivery dates, provided no supplies to DLA, and thus termination for default was proper (gov't br. at 5). DLA also argues the Paragon has not set forth any excusable delay, i.e., a delay beyond Paragon's control and without its fault or negligence (*id.* at 6). DLA asserts that

² We note that Paragon recognizes that the contracting officer canceled the orders but argues they were actually improperly terminated for default (app. br. at 3). In turn, DLA agrees that it terminated the orders for default (gov't br. at 5). Accordingly, consistent with the arguments of the parties, we analyze the propriety of the contracting officer's action as a termination for default.

relocation of the warehouse and subsequent need for a new CAGE code was at Paragon's own election and thus not beyond its control (*id.* at 6-7). DLA also argues Paragon failed to demonstrate quantum because it did not provide specific proof it incurred costs relating to these delivery orders (*id.* at 10-11).

"[A] default-termination is a drastic sanction which should be imposed (or sustained) only for good grounds and on solid evidence." *Lisbon Contractors, Inc. v. United States*, 828 F.2d 759, 765 (Fed. Cir. 1987) (quoting *J.D. Hedin Constr. Co. v. United States*, 408 F.2d 424, 431 (Ct. Cl. 1969)). Because a termination for default is essentially a government claim, the government bears the burden of proving, by a preponderance of the evidence, that a termination for default was justified. *DayDanyon Corp.*, ASBCA No. 57681, 15-1 BCA ¶ 36,073 at 176,151, *aff'd*, 600 F. App'x 739 (Fed. Cir. 2015).

The contract included essentially two default clauses (finding 3). Both state that the government may terminate the contract when the contractor fails to deliver the supplies within the time specified in the contract or any extensions of time (*id.*). See also FAR 52.249-8(a)(1)(i); FAR 52.213-4(g) (the government may terminate for cause when the contractor defaults or fails to comply with the contract terms and conditions).³ DLA stated that the termination was due to Paragon's failure to deliver the entire quantity by the delivery dates (finding 13). There is no dispute that Paragon failed to comply with the delivery dates, a required term and condition of the contract and delivery orders (findings 1, 6, 11, 13-14). This failure to make timely delivery, by law, establishes a prima facie case of default. *Delfasco LLC*, ASBCA No. 59153, 17-1 BCA ¶ 36,659 at 178,526 (citations omitted); see also FAR 52.249-8(a)(1)(i), FAR 52.213-4(g).

As noted, Paragon argues that DLA expressly waived the delivery date due to government error and delay (app. br. at 4). According to Paragon, the contracting officer admitted it was the government's fault that the delay in updating the CAGE code in SAM "for a Government-mandated origin inspection is a classic excusable delay" (app. reply at 3).

The contract required inspection/acceptance at origin, which was Paragon's own warehouse in Danville, Indiana (finding 1). At some point, Paragon moved its warehouse and was required by the contract and the FAR to ensure it changed or updated its CAGE code for the new location in SAM (finding 2). Once the change to the CAGE code was made, Paragon was to notify the contracting officer so the agency could modify the contract (*id.*).

³ No cure notice is required when the termination is due to the contractor's failure to deliver on time. FAR 52.249-8(a)(2). And no cure notice is required pursuant to FAR 52.213-4(g).

Here, Paragon notified the contracting officer a few days prior to the required delivery date for delivery order 1 that it needed an extension and had moved its warehouse (finding 7). The contracting officer reminded Paragon that the contract required inspection/acceptance at origin, with DCMA administration, and requested clarification as to whether the Danville, Indiana location, which was set forth in the contract, was still correct (finding 8; *see also* finding 1). DLA stated if the location were correct, it would then modify the orders and extend the delivery date through March 15, 2023 due to “Government error and delay, which will allow ample time for inspection and delivery of the parts” (finding 8). We understand this “Government error” to reference the need for DCMA involvement (*id.*).

Regardless, we found DLA did not modify the due date with this email (finding 8).⁴ The contracting officer specifically stated he would modify the contract only if the inspection/acceptance point was still Danville, Indiana (*id.*). Paragon admits it moved its warehouse from Danville, Indiana so it could no longer be the inspection/acceptance point (finding 9). Thus, we are perplexed how Paragon interpreted the contracting officer’s email as an express waiver and change of the contractual due date.

We have considered all of Paragon’s other arguments, which fail as well, although we do not specifically address them here. Ultimately, Paragon missed the delivery date, the failure was not excusable, and there was a contractual right to terminate for default. *SBA Contracting, LLC*, ASBCA No. 63320, 23-1 BCA ¶ 38,443 at 186,847-49 (upholding default termination upon finding no evidence the government granted a request to extend the delivery date or acted in bad faith).

⁴ Likewise, the contracting officer did not waive or change the delivery date in the subsequent email when he informed Paragon that he could not change the inspection/acceptance location without a CAGE code, requested Paragon provide documentation of the CAGE code application for the new warehouse, stated that all three due dates for the delivery orders had lapsed, and requested traceability documents showing the supplies were in Paragon’s possession and ready for inspection prior to the delivery date (findings 10-11).

CONCLUSION

The Board concludes Paragon is not entitled to the relief requested.

Dated: November 19, 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. 64297, Appeal of Paragon Defense Solutions, rendered in conformance with the Board's Charter.

Dated: November 19, 2025



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