

SUBMIT YOUR INVOICES ON TIME, OR RISK NON-PAYMENT

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Another sad story of a contractor who failed to comply with its contract, and lost its entire claim (amount not stated) for unpaid invoices. *PROTEC GmbH*, ASBCA No. 61185, May 15, 2019. The Board held that the government had properly refused to pay PROTEC's invoices, and the excuses offered by the contractor were without merit.

PROTEC was awarded a contract by the Army's Regional Contracting Office to maintain and repair equipment at the Army Garrison, in Wiesbaden. The contract required PROTEC to submit emergency repair reports within two days of providing emergency services. The contract also required PROTEC to file invoices for each previous month within the tenth working day of the next month. The Government refused to pay some 19 invoices. PROTEC missed this submission deadline by months and years in some of these invoices.

PROTEC did not dispute that it submitted the unpaid invoices late, but explained that there were two reasons for the lateness:

- Delays in receiving signed work certificates from the government; but the Board held that PROTEC did not even include the government work certificates, making it impossible for the government to track the invoices to the work. Also, the board found that work certificates had been provided in a timely manner to PROTEC.
- Delays in PROTEC's receipt of supplier invoices. However PROTEC never showed that supplier invoice delays justified the late invoices because delays by a supplier only excuse a contractor's delay if the supplier's delays are themselves excusable—and this was not shown by PROTEC.

The Board held that the Government properly refused to pay the 19 invoices because PROTEC did not submit timely electronic reports or invoices, as required by its contract. While PROTEC argues that the late submissions of reports and invoices did not prejudice the government, the Board held otherwise, as explained above. The government did not delay sending the work certificates to PROTEC, and there were no excuses offered for the supplier invoice delays.

The Board denied the appeal entirely.

Takeaway. If contractor expects to be paid for its work, it must fully comply with all invoicing deadlines contained in its contract. If there is a delay in invoicing by the contractor, it should be justified and submitted to the contracting officer immediately. Missing an invoice submission deadline by months and years as PROTEC did is inexcusable, and will likely result in the outcome that occurred in this case.

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