

## **NO CONTRACT BASED ON NO ACCEPTANCE OF PURCHASE ORDER**

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Once again, a manufacturer ran afoul of Part 13 of the Federal Acquisition Regulation by failing to understand how purchase orders operate in federal procurement. *Warfighter Defense, Inc.*, ASBCA No. 63924, July 16, 2025. Warfighter failed to understand that its actions in failing to accept a purchase order (“PO”) from the Defense Logistics Agency (“DLA”), either in writing or by substantial performance, meant that there was no contract between the company and DLA, and no relief from its non-performance of the terms of the PO.

DLA issued a Request for Quotations (“RFQ”) for special purchase electric cables on February 7, 2024. The RFQ included Federal Acquisition Regulation (“FAR”) 52.246-2, Inspection of Supplies, Fixed Price, and incorporated a Master Solicitation term and condition requiring Inspection and Acceptance at source. Ten days later, Warfighter submitted its “bid without exception,” confirming that inspection would be at origin (source), at Cable Wholesale. DLA attempted to get information from Warfighter providing traceability to the manufacturer. However, Warfighter never provided the traceability information to DLA. On April 16, 2024, DLA issued a purchase order to Warfighter for 1,122 cables to be delivered by June 17, 2024. The purchase order included the Inspection and Acceptance at Original clause.

The first page of the purchase order (“PO”), in box 16, referenced Warfighter’s quote and 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 THE TERMS AND CONDITIONS, AND AGREES TO PERFORM THE SAME.

Warfighter never signed Box 16 of the PO or otherwise indicated its acceptance, however, on April 19, 2024, Warfighter submitted a request for a “removal” (i.e., a waiver) the inspection requirement from the PO. On April 23, 2024, DLA advised that it could not waive the requirement that inspection take place at the Cable Wholesale facility.

On May 24, 2024, Warfighter submitted what it identified as a “formal notice of a claim” under the Contract Disputes Act (“CDA”) stating that DLA had breached the contract by improperly modifying it from “preaward negotiations.” Warfighter argued that imposing the inspection requirement contradicted the explicit representations made by the company that the cables were commercial, and no inspection requirement was necessary. DLA advised Warfighter that if it was not willing or able to comply with the terms of the contract, [DLA] could request a no cost cancellation and post the requirement out for rebid. Warfighter did not agree to that, and on June 5, 2024, DLA advised Warfighter that its email to DLA was a request request to modify the PO, not a claim under the CDA. Then DLA advised that “to the extent that your request can be considered a claim for adjustment of the contract terms, [] it is denied.

Warfighter filed its appeal at the Board, and DLA moved to dismiss it for lack of jurisdiction and for summary judgment in favor of the government. DLA stated that no contract had been formed.

The Board stated that only the non-frivolous allegation of a contract needed to be made for Board jurisdiction. Warfare had made such a non-frivolous assertion, and the Board held that it had jurisdiction. However, on the issue of summary judgment for DLA, the Board noted that

because the solicitation was an RFQ, Part 13 of the FAR applied. The contractor's response to an RFQ is a quotation, which *cannot* be accepted to form a binding contract. FAR 13.004(a). An offer arises when the government issues a PO, and a contract will arise only when the contractor accepts the offer. *Id.* The acceptance can occur when the contractor indicates its acceptance of the PO, preferably in writing, or alternatively, when the contractor indicates acceptance by furnishing the item ordered or proceeds to the point where "substantial performance has occurred." Instead of accepting the PO, Warfighter's post-purchase order communications constituted a rejection and a counter-offer. This terminated the contractor's power to accept the offer. Warfighter maintained that it would not waive the inspection requirement. It was undisputed that Warfighter rejected the PO, and DLA never accepted Warfighter's counter-offer (without inspection). The record indicated that Warfighter never supplied DLA with the cables in the PO or undertook any "preparatory measures" that could be considered substantial performance.

The actions of Warfighter and DLA did not indicate that any binding contract was ever formed, and the Board found there was no genuine issue for trial and held that DLA was entitled to judgment as a matter of law.

Takeaway. A quotation from a contractor is not the same thing as an offer, and cannot be accepted to form a binding contract. Only one of the two forms of acceptance described above can be used to form a binding contract. Issuance of a PO by the government in response to the quotation does not establish a contract. The order is an offer to the supplier to buy certain supplies or services upon specified terms and conditions, and a contract is established when the supplier accepts the offer. That is the legal effect of quotations.

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