

CONTRACTOR'S FAILURE TO SECURE ENFORCEABLE SUPPLIER'S COMMITMENT WAS NOT AN EXCUSE FOR DEFAULTING

Copyright 2026 Richard D. Lieberman, Consultant and Retired Attorney

A contractor that failed to deliver testing equipment under its contract was terminated for cause, and appealed the termination contending that its failure was beyond its control and not due to its fault or negligence. The Armed Services Board found no facts upon which its nonperformance was excusable, and upheld the termination for cause. *Vision Distributors LLC*, ASBCA No. 64357, July 17, 2026.

Vision received an award for the delivery of three Quaestor 8000 test devices used to test respiratory protection products and manufactured by Draeger, Inc. The units were to be delivered by May 27, 2025 at Fort Leonard Wood, MO. Nineteen days before the delivery date, Vision advised the Army that it was unable to fulfill the contract because Draeger declined to permit Vision to procure their products. The Contracting Officer advised Vision that its statement that it would not meet the delivery date was an anticipatory breach, and asked if there were any other considerations before proceeding to a termination for cause. Vision failed to respond, and on May 15, 2025, the government terminated the contract for cause.

The facts were undisputed that the government had met its burden to prove that Vision defaulted on the contract by anticipatorily repudiating the contract. The Board considered whether Vision could demonstrate that the default was excusable. Vision asserted that Draeger's refusal to allow it to purchase Quaestor 8000s was beyond its control and not due to its fault or negligence. The Board rejected Vision's excuse, stating that Vision had merely "confirmed pricing" before bidding using an authorized distributor, and had failed to secure a binding and enforceable commitment from that supplier before signing the contract. It had therefore assumed the risk that it would be unable to obtain the units required by the contract.

The Board also noted that a supplier's unexcused failure to perform would not make Vision's default excusable -- absent language in the contract, contractors are bound by the unexcused performance of its subcontractors. In that situation, Vision's only recourse would be to sue the non-performing subcontractor.

Takeaway. A prime contractor should receive an enforceable, firm agreement with a subcontractor before submitting an offer requiring goods from that subcontractor in order to perform its prime contract. The prime contract is also advised to have backup arrangements to obtain those required goods before submitting an offer to the government.

For other helpful suggestions on government contracting, visit:

Richard D. Lieberman's FAR Consulting & Training
at <https://www.richarddlieberman.com/>, and **Mistakes in Government Contracting**
at <https://richarddlieberman.wixsite.com/mistakes>.