

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

GRANTED: November 15, 2000

GSBCA 14900, 14901, 14902

GRANCO INDUSTRIES, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Darcy V. Hennessy of Moore Brower Hennessy & Freeman, P.C., Kansas City, MO,
counsel for Appellant.

John E. Cornell and Robert T. Hoff, Office of General Counsel, General Services
Administration, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **BORWICK**, and **WILLIAMS**.

WILLIAMS, Board Judge.

In these appeals, appellant, Granco Industries, Inc. (Granco), challenges the termination for cause of two contract line items under a requirements contract.¹ Granco claims it withdrew its bid for the two line items and, therefore, no contract existed between Granco and the Government for those items.² The Government contends that the withdrawal

¹Appellant challenges three terminations for cause in these consolidated appeals. In GSBCA 14900, Granco challenges the November 17, 1998, termination for cause of thirteen purchase orders under contract line item 8 and four purchase orders under contract line item 5. In GSBCA 14901, appellant challenges the December 22, 1998, termination for cause of contract line item 8 in its entirety, and in GSBCA 14902, the January 28, 1999, termination for cause of contract line item 5 in its entirety. Appeal File, Exhibits 24, 30, 37.

²Granco lodges two additional grounds of appeal which we do not reach given our conclusion that there was no contract. First, Granco claims that even if there was a valid contract for those items, the Government caused the delay of the delivery of such items.

of appellant's bid was ineffective because it was attempted during the ninety-day acceptance period. The Government would be correct if that were the entire story. It is not. Appellant was asked to extend its bid, and it did so after submitting a letter withdrawing the bid as to the two line items in question. Award was made not on the original bid, but on the extended bid which was modified to withdraw these line items. As such, no contract on the withdrawn items was ever formed, and the purported termination was ineffectual. The appeals are granted.

Findings of Fact

The Solicitation

On July 14, 1997, the General Services Administration (GSA) issued solicitation number 6FES-F7-97F70145-S for the supply of socket wrenches for the contract period October 1, 1997, through September 30, 1999. Appeal File, Exhibit 1. The solicitation was an invitation for bids (IFB), and the date specified for receipt of bids was August 26, 1997. Id. at 2.

The solicitation contained the Minimum Bid Acceptance Period (October 1985) clause, which provided:

- (a) "Acceptance period," as used in this provision, means the number of calendar days available to the Government for awarding a contract from the date specified in this solicitation for receipt of bids.
- (b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.
- (c) The Government requires a minimum acceptance period of *120* calendar days.
- (d) In the space provided immediately below, bidders may specify a longer acceptance period than the Government's minimum requirement. (Insert any number equal to or greater than the minimum requirement stated in paragraph (c) of this provision. Failure to insert any number means the offeror accepts the minimum in paragraph (c)).

The bidder allows the following total acceptance period: _____ calendar days.

- (e) A bid allowing less than the Government's minimum acceptance period will be rejected.

Second, appellant contends that the Government waived the delivery dates of the subject orders.

- (f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c), above, or (2) any longer acceptance period stated in paragraph (d), above, or (3) any extension of the offered acceptance period as may be subsequently agreed to by the bidder.

Appeal File, Exhibit 1 at 74.

The solicitation contained Clause 52.214-5, Submission of Bids (Mar. 1997), which provided that "bids may be modified or withdrawn by written or telegraphic notice." Appeal File, Exhibit 1 at 75.

The solicitation also contained Clause 552.225-71, Notice of Procurement Restriction - Hand or Measuring Tools or Stainless Steel Flatware (May 1989), which provided:

- (a) Awards under this solicitation will only be made to offerors that will furnish hand or measuring tools or stainless steel flatware that are domestic end products. Pursuant to the requirements of the current Department of Defense Appropriations Act, GSA has determined, in accordance with Section 6-104.4 of the Armed Services Procurement Regulation (6/15/70) (32 CFR 6-104.4), that it is in the national interest to reject foreign products.

As used in this clause, a "domestic end product" is --

- (1) Any hand or measuring tool, except for an electric or air-motor driven hand tool, or stainless steel flatware, wholly produced or manufactured, including all components, in the United States or its possessions; or
 - (2) Any electric or air-motor driven hand tool if the cost of its components produced or manufactured in the United States exceeds 75 percent of the cost of all its components.
- (b) Tool kits or sets, being procured under this solicitation, will not be considered domestic end products if any individual tool classified in FSC Group 51 or 52 and included in a tool kit or set is not a domestic end product as defined in paragraph (a) of this clause. The restrictions of this clause do not apply to individual hand or measuring tools that are contained in the tool kit or set but are not classified in FSC Group 51 or 52.

Appeal File, Exhibit 1 at 74.

The solicitation also included Clause F-FSS-260, Time of Delivery (Feb 1986), which provided:

Delivery is required to be made at destination within *90* calendar days after receipt of order. (NOTE: SEALED BIDS: A change in the number of days will make your bid nonresponsive and it will be rejected.)

Appeal File, Exhibit 1 at 49.

The solicitation's Termination for Cause clause stated:

Termination for cause. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

Appeal File, Exhibit 1 at 40.

The solicitation included a schedule soliciting seventeen separate line items. Appeal File, Exhibit 1 at 27-31. Multiple offers were encouraged, and the Government could accept individual items of an offer or groups of items. Id. at 73.

Granco's Bid

On August 14, 1997, Granco submitted a bid including unit prices for all line items except 6 and 10. In particular, appellant bid a unit price of \$4.40 for line item 5, hinged handles, national stock number (NSN) 5120-00-240-5396 (5396), and a unit price of \$4.80 for line item 8, socket wrench handles, NSN 5120-00-240-5364 (5364). Appeal File, Exhibit 1 at 29. Granco did not fill in the blank in subparagraph (d) of the Minimum Bid Acceptance Period clause. Id. at 74. Thus, its bid was valid for 120 calendar days.

On December 17, 1997, one week before Granco's bid would have expired, the contracting officer sent Mr. Dennis Waldo, the vice president of Granco, the following letter:

The date within which the Government may accept your bid on the above captioned invitation is specified in block 2 above [December 24, 1997].

Due to the time required to complete the orderly evaluation of bids received, we request an extension of the acceptance period shown in block 3 above [February 24, 1998].

An extension of acceptance time is necessary to preserve the bid for further consideration should no award be made within the time presently available.

IT IS ESSENTIAL THAT AN EXTENSION OF ACCEPTANCE TIME BE COMMUNICATED IN WRITING (OR BY TELEGRAPHIC MESSAGE) AND BE RECEIVED AT THE OFFICE SPECIFIED BELOW BY THE DATE SPECIFIED IN BLOCK 4 ABOVE [DECEMBER 19, 1997]. In case a reply is not received by the specified date, the Government may proceed to expedite the evaluation and to make an award to your firm on or before the date of bid acceptance above.

For your convenience you may complete and sign the statement prepared below and return to the office.

Appeal File, Exhibit 12.

On the face of that same letter, Mr. Waldo, in his capacity as vice president of Granco, signed the referenced statement which provided: "The undersigned extends the date for acceptance for subject bid to February 24, 1998." The statement was dated December 17, 1997. Appeal File, Exhibit 12.

Granco's Attempt to Withdraw Portions of its Bid

When the Government requested an extension of a bid, Granco's vice president typically contacted his vendors to make sure the pricing was still correct. Transcript at 16-17. In the process of doing this here, Mr. Waldo noticed Clause 552.225-71 in the solicitation requiring domestic end-products, including all components, wholly produced or manufactured in the United States. Id. at 17-18; see Appeal File, Exhibit 1 at 74. Mr. Waldo questioned his vendors on whether items 4, 5, 7, 8, and 9 were domestic end-products and learned that they were foreign in that "the forging came from Taiwan." Transcript at 17. Mr. Waldo, therefore, withdrew Granco's bid for items 4, 5, 7, 8, and 9 because he believed that these items did not meet the solicitation's requirements for domestic end-product. Id. at 16-17, 27.

Specifically, on January 23, 1998, Granco sent a letter to GSA stating that Granco "is hereby notifying you of our intent to withdraw our bid on the following items: 4, 5, 7, 8, and 9. Please note that as of January 23, 1998, Granco Industries, Inc. has withdrawn our bid on the above mentioned items." Appeal File, Exhibit 12. Granco never received a response to this January 23 letter. Transcript at 18, 130-31.

The GSA contract specialist who worked on the procurement had been in her position for two years and was still in training. She testified:

Q And did you receive [the January 23 letter from Granco]?

A Yes, ma'am.

Q But, you did not process it, I understand that.

A No I didn't do anything with it.

Q Now, was it your responsibility to act on that at the time?

A My personal opinion is, yes.

Q It was? So, it came to the right person?

A Yes. I would have taken it to the Contracting Officer.

Q Did you take it to the Contracting Officer?

A No ma'am, not that I recollect.

Q Now, why didn't you do that?

A I have no idea.

....

Q Well, can you enlighten us at all -- this letter never got to the Contracting Officer at the time, you didn't take it to her?

A No, not at this date.

Transcript at 152-53.

Granco's Extension of the "Subject Bid"

On February 18, 1998, Granco's vice president signed a form letter identical to that which he had signed on December 17, 1997, except this time extending the date for acceptance of "the subject bid" until March 28, 1998. Appeal File, Exhibit 13. Again, no notations were made on this letter indicating that any line items had been excluded from the bid extension. Id. Granco's vice president signed the document extending its bid until March 28, but did not believe that Granco had extended its bid with respect to the items listed in its January 23, 1998, letter. Transcript at 19-20. Granco's vice president testified that it was not Granco's intention to extend its bid for items 4, 5, 7, 8, and 9. Id. The contract specialist believed that the "subject bid" in the extension referred to the original bid, and that the extension qualified the January 23 letter to show Granco had decided to extend its full bid. Id. at 156. The contract specialist did bring Granco's letter of January 23 to the attention of the contracting officer before making award. Id. at 155. The ACO received copies of Granco's request to withdraw its bid, but never discussed this with Granco and never responded to the request. Id. at 130-31.

The Award

On February 25, 1998, GSA awarded Granco a contract for items 4, 5, and 8 under contract number GS-06F-78629 and items 1, 14, 15, and 16 under contract number GS-06F-78624. Appeal File, Exhibit 1 at 1, 26; Transcript at 21. On March 2, 1998, Granco received the letter notifying it of this award. Id. Granco was not expecting the award on

items 4, 5, and 8 because it had withdrawn its bid as to those items, and Granco's vice president was shocked to receive the award. Transcript at 23.

Granco's vice president called the GSA's contract specialist and asked if she had received the letter withdrawing the bids. The contract specialist said she "would have to look into it." The contract specialist called Granco's vice president back a couple of days later and said she "would have to get with [her] ACO [administrative contracting officer] and look in on that further." Transcript at 23, 143. The contract specialist did not advise him that Granco could not withdraw its bid. Id. at 24.

In addition, after he was notified of the award, the president of Granco called the procuring contracting officer (PCO). Granco's president testified:

Q Now, at any point in time after GSA had attempted to award these items to Granco, did you have any conversations with anyone at GSA about Granco's request to withdraw its bid?

A Well, once we thought we had withdrew them and thought it was – we weren't getting them. Then, when we started getting them, I called Roy Trickle [the PCO] and I says – I used pretty plain words. I told him I didn't want to go down that road being – putting myself in a position that Inspector General's Office would come up and file a lawsuit against me for fraud because there's no such thing as being wholly produced in the United States.

I said I need a letter from you guys or something giving me some exceptions. Raw materials, chrome, nickel whatever. And he said yeah – he understood what I was talking about. But, I never received any letter.

Transcript at 106-07.

No one at Granco signed the award document because Granco had withdrawn its bid on items 4, 5, and 8 and its vice president "didn't want to compound the issue and sign something [he] really didn't want to start with." Transcript at 22.

On April 27, 1998, one order was placed for line item 5 and two orders were placed for line item 8. All three orders were due to be shipped on July 29, 1998.

Granco's Efforts to Perform

At this point Granco had not heard anything from GSA regarding its request to withdraw its bid, so it believed this request was still being reviewed. Transcript at 26. However, once Granco received the orders for these items it believed that GSA was going to enforce the award of the contract and that it had to perform. Id.

Therefore, Granco attempted to obtain clarification of what the domestic end-product requirements were. Transcript at 34-37. However, between April and July Granco never received any official GSA interpretation. Id. at 36. In July, Granco's vice president called the contract administrator and administrative officer (ACO), Peter Smolinski, for this interpretation, and the ACO told Mr. Waldo to put his request in writing. Id. at 37-38. Additional orders were placed for these items.

By letter dated July 22, 1998, Granco's vice president Mr. Waldo asked Mr. Smolinski the following question regarding whether the tools it was to provide must be "domestic end products":

Is raw material, raw forgings, etc., acceptable coming from foreign sources? These items are manufactured, plated, and assembled in the United States, but as stated, the raw material is of foreign source, which only makes up less than 10% of the total cost. Granco has spent a great deal of time attempting to locate a supplier who could supply 100% American made material. We have found any such materials to be non-existent [sic].

Our attorney . . . spoke with GSA counsel . . . who wrote an opinion on the subject a few years ago. We believe our interpretation of the subject GFAR [sic] clause is consistent with her opinion.

If it is not GSA's interpretation of the clause, then Granco respectfully requests the no cost termination of this contract for the subject line items. Granco attempted to withdraw its bid for the subject line items before bid opening, but GSA would not let Granco withdraw it [sic] bid. Although Granco subsequently worked with GSA on this contract, Granco did not intend to supply the subject line items, because of its concern over GSA's possible adverse interpretation of the subject clause.

Appeal File, Exhibit 3.

On August 13, 1998, GSA responded to the July 22 letter as follows:

With regard to your 7/22/98 letter, inquiring whether or not raw material used from foreign sources would meet the domestic end products clause in contract . . . , the following opinion was received: If only the raw material is foreign and there are at least 2 distinct manufacturing processes through which the material goes . . . to produce the final product, . . . the tool is considered a domestically manufactured item.

Please advise if use of the foreign material would meet the criteria above; if so, please proceed with shipping contract POs [purchase orders], if not, please advise me of that.

Appeal File, Exhibit 8. Based upon this response, Granco believed it could use foreign raw forging material, subject it to numerous manufacturing processes, i.e., drilling, grinding, broaching, applying heat treat or chrome, and stamping, and still meet the domestic end-product requirements. Transcript at 45-46. After receiving this response, Granco procured sample parts through its supplier for its use in manufacturing line items 5 and 8.

In late August, a GSA inspector came to appellant's plant on other business, reviewed Granco's proposed materials and parts, and expressed doubts as to whether those materials and parts would meet the requirements of the subject clause. Transcript at 55-56. The GSA inspector advised Granco that if the raw material forging looked like the end product it would not be considered a domestic end product. Transcript at 55-57. Therefore, Granco believed GSA had given it a definitive answer that its raw forging material was from a foreign source and could not be used. Id. at 57. During the inspector's visit, Granco's vice president "conveyed to him a number of times that he tried to withdraw his bid before award was made." Appeal File, Exhibit 11. This information was transmitted to the ACO, PCO, and contract specialist on August 28, 1998. Id.

Granco's vice president subsequently attempted to find a supplier of items 5 and 8 whose product would meet the interpretation given him by the inspector, but was unsuccessful locating any parts meeting the requirements at a commercially practical price. Transcript at 58. Obtaining the raw forging from a domestic source would have cost \$5 more per item -- \$9 to \$10 as opposed to Granco's bid price of \$4.80. Id. At this point Granco could not produce the items by the due date, and some orders were already overdue. Id. at 59.

By letter dated August 26, 1998, GSA advised Granco that certain orders were delinquent and that it was considering terminating purchase orders under line items 5 and 8 for default. Appeal File, Exhibit 10. The letter continued:

Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose from causes beyond your control and without fault or negligence on your part. Accordingly, you are given the opportunity to present in writing any facts bearing on the question . . . within ten days after receipt of this notice. Your failure to present any explanation within this time frame may be considered as an admission that none exists. In such case, the Government may consider that you have defaulted and may proceed with the termination of the above orders

Id. The facsimile cover sheet accompanying this show-cause letter stated:

While the issues raised in your 7/22/98 letter . . . are still being discussed and evaluated, this does not alleviate Granco's responsibility to deliver the attached contract orders on a timely basis. Please review and reply to the attached letter.

Id. at 2.

On August 27, 1998, GSA representatives had discussions with Granco's vice president concerning Granco's plan for supplying the delinquent items. Granco's vice president stated that forgings made by United States suppliers would be available, but their price would not allow him to sell at the price bid. Appeal File, Exhibit 11. Granco's vice president also reiterated a number of times "that he tried to withdraw his bid before award was made." Id.

By letter dated September 10, 1998, Granco offered a monetary consideration of \$2957 to extend the delivery dates of the delinquent orders until November 26, 1998, through January 23, 1999. Appeal File, Exhibit 13. On September 22, 1998, GSA requested Granco to clarify its September 10 offer specifying the amount of consideration attributable to each order and asking if Granco could reduce the length of the requested extensions and provide specific reasons for the delay. Id., Exhibit 20. By letter dated September 30, 1998, Granco advised GSA of a breakdown of individual purchase orders for extended delivery consideration. Id., Exhibit 17. In addition, Granco stated:

The main reason for the delay of the subject purchase orders was in receiving clarification of clause 552.225-71 [Domestic End Product]. Receiving this clarification on raw material versus forged material was critical in our manufacturing process.

Corrective action: Since receiving the clarification on forged material, we have found two domestic sources for our forgings to manufacture the subject items. Orders have already been placed for this material and our manufacturing process has begun. Granco believes that with two reliable sources in place, and the attention that we are giving to this contract, we should be granted the delivery extensions set forth in this correspondence.

Id. at 2.

On October 6, 1998, GSA issued a modification extending the delivery dates of several orders to October 30, 1998. Appeal File, Exhibit 4. GSA further explained:

As there are backorder demands for these items, it is not in the Government's best interest to grant the extensions requested by Granco. As such, the Government is exercising its right to unilaterally reestablish the delivery dates for these orders . . . to October 30, 1998. In the event that your firm fails to deliver these purchase orders . . . by the reestablished date, the Government may terminate the orders for cause.

Id., Exhibit 20 at 2.

By letter dated October 27, 1998, Granco, through its counsel, requested that GSA cancel or rescind the contract at no cost to the Government or reestablish a realistic delivery date based upon the circumstances of Granco and recognizing that all components had to be produced domestically. Appeal File, Exhibit 21. It was not possible for Granco to supply

domestic end products by the end of October, given the lead time required by the domestic suppliers. Transcript at 71-76, 81.

The Terminations for Cause

On November 18, 1998, GSA terminated for cause (failure to deliver) appellant's right to proceed further with purchase orders under line items 5 and 8. Appeal File, Exhibit 24.

Granco failed to deliver items under additional purchase orders for line items 5 and 8. On December 22, 1998, GSA terminated line item 8 in its entirety for cause for failure to deliver. Appeal File, Exhibit 30. By letter dated January 28, 1999, GSA terminated line item 5 in its entirety for failure to deliver. Id., Exhibit 37.

Discussion

The Government has the burden of proving by a preponderance of the evidence that a termination for cause was proper. E.g., Lisbon Contractors, Inc. v. United States, 828 F.2d 759 (Fed. Cir. 1987); Integrated Systems Group, Inc. v. Social Security Administration, GSBCA 14054-SSA, 98-2 BCA ¶ 29,848.

Respondent asserts that its termination for cause should be upheld in that appellant had a valid contract to supply the handles because its attempted withdrawal of its bid was ineffectual, and appellant failed to deliver. Respondent contends that appellant's bid was irrevocable during the initial acceptance period and any extension.

While it is generally true that a bid is irrevocable during the acceptance period, see Nationwide Reporting and Convention Coverage, GSBCA 8309, 88-2 BCA ¶ 20,521; Western Adhesives, GSBCA 7449, 85-2 BCA ¶ 17,961; 48 CFR 14.303 (1999), the question in this case is what appellant's irrevocable bid was at the time award was made. Appellant attempted to withdraw parts of its bid, including line items 5 and 8, during the initial acceptance period. Although the attempted withdrawal of January 23 was ineffectual during the initial acceptance period and appellant's entire bid, including line items 5 and 8, remained in full force and effect until February 24, 1998, award was not made until February 25.

Appellant contends that at that point in time it had only extended the portion of its bid which was still viable. That portion did not include line items 5 and 8, which it had expressly withdrawn by the January 23 letter. Respondent contends that the extension of bid refers to the original bid and that the extension superseded appellant's January 23 withdrawal letter.

The question before us is whether appellant's withdrawal letter of January 23 operated to modify the bid appellant later extended on February 18. The evidence as a whole supports appellant's position. Appellant certainly intended to exclude the withdrawn items from the "subject bid" it extended. Appellant was not required to bid on all line items in the invitation for bids, and award could be made, and was made, on less than all items.³ Appellant's

³Respondent argues that the bid extension referred to the entire solicitation and did not itself alert GSA to the withdrawal. While it would have been prudent for appellant to have

January 23 letter was an acceptable method of withdrawing or modifying a bid -- the solicitation provided that bids could be withdrawn or modified "in writing" or telegraphically. The fact that appellant's letter was legally ineffective as a bid withdrawal within the ninety-day bid acceptance period does not nullify or void appellant's clear communication of what its bid was to be after that period. The legal ineffectiveness of the attempted withdrawal at that time does not change the fact that the agency was clearly notified of appellant's intention to withdraw its bid as to items 5 and 8 prospectively. The agency simply ignored appellant's January 23 letter and concluded that the extension of the "subject" bid necessarily meant the original bid. Respondent's position is legally erroneous.

Respondent points out that Western Adhesives holds that an extended bid is irrevocable during the extension period. While this legal conclusion is accurate, it does not address the situation we face here -- where a bidder has attempted to withdraw a bid prior to executing its extension, believing its extension has excluded certain items. Western Adhesives presented a clear cut case of a contractor attempting to withdraw its entire bid, after it had extended the bid, before the bid expired.

The legal principles which impel this decision lie not in the "firm bid" rule embodied in Western Adhesives but in fundamental elements of contract formation. When the contracting officer signed the notice of award, the only bid appellant had open for acceptance was a bid it extended after withdrawing the items in question.⁴ Since the award was not in conformity with appellant's only outstanding bid, the signing of the notice of award could not give rise to a valid contract; it was no more than a counter-offer by the Government requiring acceptance by appellant in order for a contract to arise. Dunrite Tool & Die Corp., ASBCA 16708, et al., 73-1 BCA ¶ 9940. Appellant's failure to sign the award and its reiteration to GSA that it had withdrawn the subject items was in legal effect the rejection of the contract offered by the Government and the making of a counter-offer. Dunrite, 73-1 BCA at 46,648. The Government did not accept appellant's counter-offer but instead took the legally erroneous position that the notice of award gave rise to a legally binding contract conforming to appellant's original bid. Id.

Nor did appellant's conduct in attempting to perform as directed by the Government operate to create or ratify a valid and binding contract. Appellant simply desired to obtain the contract if it could reach agreement with the Government on the delivery of a compliant product at a commercially practicable price. See Dunrite, 73-1 BCA at 46,648 ("We find no legal significance in certain actions taken by Mr. Greco after he received the Notice of Award which might be interpreted as a recognition on his part that he had a legal obligation to perform in accordance with the contract terms presented to him by the Government.

annotated its extension form to clarify that it had withdrawn items 5 and 8, this was not legally necessary in light of its January 23 letter. The fact that the extension refers to the entire solicitation does nothing to advance respondent's position since appellant did not bid on the entire solicitation in the first place.

⁴There is no legal impediment to appellant modifying the bid it extended, and conversely there is no legal requirement that appellant could only extend its original bid on an all-or-none basis.

Mr. Greco's course of conduct is easily explainable as due to a desire to avoid a dispute with the Government and a sincere desire to obtain the contract and manufacture the contract items for the Government if he could reach agreement with the Government on a reasonable and realistic delivery schedule.").

Since there was never a binding contract, the purported termination was ineffectual.

Decision

The appeals are **GRANTED**.

MARY ELLEN COSTER WILLIAMS
Board Judge

We concur:

STEPHEN M. DANIELS
Board Judge

ANTHONY S. BORWICK
Board Judge