



JONATHAN L. KANG  
Chair

**GOVERNMENT ACCOUNTABILITY OFFICE**  
**CONTRACT APPEALS BOARD**

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Vice Chair

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EAGLE GROUP	)	
SPORTSWEAR, INC. <sup>1</sup>	)	
	)	
Appellant,	)	
	)	
v.	)	CAB No. 2022-03
	)	
GOVERNMENT PUBLISHING	)	
OFFICE	)	
	)	
Respondent.	)	
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Appearance for the Appellant: Todd O. Baker, President  
Eagle Group Outfitters

Appearance for the Respondent: James Goodman III, Esq.  
Nicole E. Goldstein, Esq.  
U.S. Government Publishing Office

Board Members: Heather Kilgore Weiner (Presiding)  
Jonathan L. Kang  
Evan D. Wesser

**DECISION**

Appellant, Eagle Group Sportswear, Inc. (Eagle Group), appeals a contracting officer’s final decision by respondent, the Government Publishing Office (GPO), imposing a

<sup>1</sup> Although the appeal was submitted using the company name, “Eagle Group Outfitters,” respondent requests that appellant’s name be corrected on the record to reflect “Eagle Group Sportswear, Inc.,” which is the name of the company awarded the contract being disputed in this appeal. R4, tab 1 at 001; see Mot. For SJ at 1.

termination for default in connection with Purchase Order No. G8065, Jacket No. 535-116, which GPO issued on behalf of the U.S. Department of Agriculture, Forest Service for 12,010 baseballs. Appellant claims that the contracting officer's decision to terminate for default was improper because "a time frame was established by [respondent] stating that [the] balls needed to be delivered in May 2022 or [the contract] would be terminated," but the "[c]ontract was terminated in April 2022." App. Addl. Response, Sept. 20, 2022; Complaint at 1. In addition, appellant asserts that it provided the Forest Service with a partial delivery of approximately 3,000 baseballs, for which it has not been paid.

Respondent has filed a motion for summary judgment with respect to appellant's challenge to the termination for default, which appellant opposes. With regard to appellant's request for payment for partial delivery of the baseballs, respondent maintains, and the appellant does not dispute, that appellant has not submitted a final claim to the contracting officer for such payment. We GRANT respondent's motion for summary judgment concerning the default termination and DISMISS appellant's request for payment for the partial shipment of baseballs. As such, we DENY in part and DISMISS in part the appeal.

## BACKGROUND

The purchase order, issued on June 2, 2021, was for 12,010 baseballs with a Smokey the Bear logo printed on each.<sup>2</sup> Rule 4 File (R4), Tab 1, Purchase Order at 001.<sup>3</sup> Delivery was required by September 1, 2021. *Id.* at 2. The purchase order specified that the baseballs "must not have bumpy surfaces or be un-stitched and re-stitched for printing," nor were images allowed to be "stretched." *Id.* at 002-003. Pertinent here, the purchase order required the submission of prior-to-production-samples before contract performance. *Id.* at 005-006. In this regard, the "PROOFS" section of the purchase order provided, with regard to production proofs:

Samples will be inspected and tested and must comply with the specifications as to kind and quality of materials and quality of reproduction. Prior to the commencement of production of the contract production quantity, the contractor shall submit [prior-to-production] samples to the [USDA] in distribution section.

\* \* \* \* \*

If the samples are disapproved by the Government, the Government, at its option, may require the contractor to

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<sup>2</sup> This amount included 10 sample baseballs (*i.e.*, "printed and constructed"), with 5 baseballs to be sent to both the GPO and the Forest Service prior to production of the finished product. Rule 4 File (R4), Tab 1, Purchase Order at 5.

<sup>3</sup> References herein to page numbers for R4 tabs are to the Bates numbering furnished by GPO.

submit additional samples for inspection and test . . . with no extension in the shipping schedule.

\* \* \* \* \*

Manufacture of the final product prior to approval of the sample submitted is at the contractor's [own] risk.

*Id.*

#### Initial Production of Baseballs from Chinese Supplier

On June 2, 2021, GPO issued the order for Jacket No. 535-116 to Eagle Group. Complaint at 1; Resp. Statement of Undisputed Fact at 1. Eagle Group states that it “subcontracted the production of these balls to a supplier in China, who produced prior to production samples and further shipped the entire order via ocean freight to the contact in the United States.” *Id.* The prior-to-production samples from the Chinese supplier were approved by the Forest Service in June 2021.<sup>4</sup> See R4, Tab 10, Email from GPO to App., Mar. 16, 2022 at 024. Regarding the shipment of baseballs from China, Eagle Group explains that “[a]fter 3 months of trying to track the ocean freight[,] we understand that it was lost or stolen.” Complaint at 1.

The Forest Service did not receive the baseballs by the September 1 delivery date. On September 13, 2021, GPO emailed appellant requesting it “[p]lease get us the status on this order [as] [i]t was due [September 1, 2021].” R4, Tab 3, GPO Email to App., Sept. 13, 2021 at 010. Appellant responded “[w]ill do” that same day. R4, Tab 3, App. Email to GPO, Sept. 13, 2021 at 010.

A month later, on October 13, GPO again emailed appellant “please let us know the status of these baseballs.” R4, Tab 4, GPO Email to App., Oct. 13, 2021 at 011. Appellant responded the same day that the baseballs were “stuck on a cargo ship waiting to be unloaded,” and that after the baseballs shipped they “have not been scanned since [August 14, 2021].” R4, Tab 4, App. Email to GPO, Oct. 13, 2021 at 011.

After another month, when the Forest Service still had not received delivery of the baseballs, it emailed GPO on November 18, asking if there were “[any] updates on the baseballs?” R4, Tab 5, Forest Service Email to GPO, Nov. 18, 2021 at 012. In response to an email inquiry from GPO, appellant responded that same day that there were “[n]o updates since August 2021[,]” and that it “[couldn’t] get much more [information] right now.” R4, Tab 6, App. Email to GPO, Nov. 18, 2021 at 014.

#### Show Cause Letter

On January 24, 2022, the contracting officer issued a Show Cause letter to Eagle Group, advising that GPO was “considering terminating the [contract] under the

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<sup>4</sup> The record is unclear as to whether respondent approved sample baseballs or digital prints, but this lack of clarity does not matter in light of the Board’s other findings.

provisions for default of this contract” for “failure to deliver the total quantity on September 1, 2021.” R4, Tab 7, Show Cause Letter at 017.

On January 25, appellant responded to the Show Cause letter stating that since the baseballs were shipped in August of 2021 from China, it had “not been able to locate anything,” and that the situation “[was] out of [its] control.” R4, Tab 8, App. Email to GPO, Jan. 25, 2022 at 018. Appellant proposed “using a vendor close by.” *Id.* Then, on February 9, appellant emailed the Forest Service that it was going to “remake the balls in the USA,” due to the balls in China being delayed.<sup>5</sup> R4, Tab 9, App. Email to Forest Service and GPO, Feb. 9, 2022 at 021. Appellant further states that because “[t]he costs were 300% more making the balls in the United States” (U.S.) it told the Forest Service that it was going to “make 1/3 of the balls in the [U.S.] and the balance in China.” Complaint at 1.

### Second Production and Partial Shipment of Baseballs from U.S. Manufacturer

On February 9, appellant provided the Forest Service with digital proofs for the U.S. manufacturer for approval before providing physical prior-to-production samples. R4, Tab 9, App. Email to Forest Service and GPO, Feb. 9, 2022 at 021. After a back and forth regarding the text and images, the Forest Service approved the digital proofs, stating that they were “[a]pproved for pre-production samples.”<sup>6</sup> R4, Tab 9, Forest Service Email to App., Feb. 16, 2022 at 019. On February 23, GPO emailed appellant asking that it “let [us] know the plan to deliver the [prior-to-production samples]” and to “be sure to send [us] the tracking info[rmation].” R4, Tab 9, GPO Email to App., Feb. 23, 2022 at 019. Appellant responded “will do” and “[s]hould have them ready next week.” R4, Tab 9, App. Email to GPO, Feb. 23, 2022 at 019.

On March 16, 2022, the Forest Service informed GPO that it had received a “partial shipment of our baseballs[.]” R4, Tab 10, Forest Service Email to GPO, Mar. 16, 2022 at 023. Uncertain whether the baseballs were from the U.S. manufacturer or the Chinese manufacturer (because the boxes indicated “made in China”), the Forest Service noted that it “never did a final approval for the new shipment [of baseballs]” that “[Eagle Group] indicated [it was] having made in the [U.S.]” and was curious “[h]ow it [was] possible” it was receiving shipment of these baseballs without approval of the prior-to-production samples. *Id.* at 023-024. In any event, the Forest Service advised that it had “an issue with the ‘Strike Out Wildfires!’ text being [too] small.” *Id.* at 23.

Respondent emailed appellant to inquire about the partial shipment of baseballs. R4, Tab 10, GPO Email to App., Mar. 16, 2022 at 023. Appellant confirmed that the partial shipment of baseballs that the Forest Service received were “[m]ade in the USA.” *Id.*, App. Email to GPO, Mar. 16, 2022 at 023. GPO asked appellant if “these ball[s] [were] produced at the new plant before the [prior-to-production samples] were approved?”

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<sup>5</sup> Eagle Group states that it then opted to use “Bayden Sports in Seattle, Washington to produce new baseballs.” Complaint at 1.

<sup>6</sup> Respondent explains that the “digital proofs are an emailed picture of what the baseballs would look like.” Mot. For SJ at 4, n.2.

*Id.*, GPO Email to App., Mar. 16, 2022 at 023. Appellant responded: “[The plant] couldn’t just run one ball and send out a prior[,] [s]o [it] ran all of them together. Just praying that the [digital] art [the Forest Service] approved would work.” *Id.*, App. Email to GPO, Mar. 16, 2022 at 022. GPO replied that “the text is too small.” *Id.*, GPO Email to App., Mar. 16, 2022 at 022. In response, appellant explained that “[f]or whatever reason[,] the manufacturer said the ink was smu[d]ging at the larger size and did not pass quality.” *Id.*, App. Email to GPO, Mar. 16, 2022 at 022.

#### Production of Remaining Baseballs from Chinese Manufacturer

On March 31, 2022, GPO emailed appellant to check on the part of the order of baseballs that appellant said it placed with a Chinese manufacturer, asking “[w]hen [are] the remaining items scheduled to deliver and will they also have the small text?” App. Addl. Response, App. exh. 1, GPO Email to App., Mar. 31, 2022 at 7. Appellant responded that it “assum[ed] they will have the smaller text” and that it “will keep [respondent] posted.” *Id.*, App. Email to GPO, Mar. 31, 2022 at 6. In response, GPO asked appellant if it could “confirm what China will print” because “the larger text is what was approved” and also to confirm when the baseballs would ship. *Id.*, GPO Email to App., Mar. 31, 2022 at 6.

Respondent followed-up with appellant on April 5, asking that appellant “check on this shipment” and noting that “[t]he ware house is out of baseballs and as you know it[’s] baseball season.” App. Addl. Response, App. exh. 1, GPO Email to App., Apr. 5, 2022 at 6. Respondent asked appellant to “[p]lease let me know and see if you can speed up the process.” *Id.* Appellant responded, “[w]ill do.” *Id.*, App. Email to GPO, Apr. 5, 2022 at 6.

On April 13, Respondent again asked appellant to provide “an update on delivery.” *Id.*, GPO Email to App., Apr. 13, 2022 at 5. Appellant responded that the baseballs were “[s]hipping from China in May 2022” and that the “[e]stimate[d] delivery [was] 60-90 days via ocean.” *Id.*, App. Email to GPO, Apr. 13, 2022 at 5.

On April 15, GPO emailed appellant stating that Eagle Group needed to get “written confirmation from [the] Chinese manufacturer of the baseballs stating that the baseballs are in production and will be produced in accordance with the approved prior to production samples,” as well as a “proposed delivery date (not a date range) as to when the baseballs will deliver to the spec[ified] address in [Minnesota].” App. Addl. Response, App. exh. 1, GPO Email to App., Apr. 15, 2022 at 5. Respondent further cautioned: “If you cannot get the above confirmation with proposed delivery date no later than May 2022, this order will be terminated for default and your firm will be liable for any reprourement costs.” *Id.* GPO further advised that it needed to receive the confirmation “no later than Monday, [April 18, 2022].” *Id.*

Appellant responded that same day that “[t]hey are making the balance of the 12[,]000 [baseballs] in China and I told you we are 2[-]3 months out.” App. Addl. Response, App. exh. 1, App. Email to GPO, Apr. 15, 2022 at 4-5. Appellant added: “Who knows if and when the container of baseballs will arrive in the [U.S.]?” *Id.* at 5. GPO replied that “[w]hen we spoke when the show cause was sent[,] you gave us a different timeline for

the delivery of the balance items.” *Id.*, GPO Email to App., Apr. 15, 2022 at 4. GPO then again asked appellant to “find out all the specifics on production/shipping/delivery” and “let us know Monday.” *Id.* GPO then followed up with an email clarifying that “[w]e still need to see the requested confirmation directly from the Chinese manufacturer.” *Id.*, GPO Email to App., Apr. 15, 2022 at 4. Appellant responded “Got it.” *Id.*, App. Email to GPO, Apr. 15, 2022 at 3.

On Monday, April 18, GPO emailed appellant a reminder that it needed the “follow up with the factory confirmation of the status” of the baseball order. App. Addl. Response, App. exh. 1, GPO Email to App., Apr. 18, 2022 at 3. Appellant responded that it “should have [it] today.” *Id.*, App. Email to GPO, Apr. 18, 2022 at 3. GPO replied to advise appellant to “please [copy] [GPO’s regional manager] as well” on its email correspondence. *Id.*, GPO Email to App., Apr. 18, 2022 at 3. Later that afternoon, Eagle Group emailed GPO’s publishing specialist and regional manager that it had heard “nothing from China today[;] [h]opefully soon.” *Id.*, App. Email to GPO, Apr. 18, 2022 at 3. In response, GPO’s regional manager advised that GPO had “g[iven] the contractor a reasonable amount of time from [April 15] to [April 18] to contact his Chinese supplier and provide the requested information” and that GPO would “proceed with a [termination for default] with procurement cost charged to the contractor.” *Id.*, GPO Email to App., Apr. 18, 2022 at 2.

The next day, April 19, appellant provided GPO via email a copy of its order with the Chinese manufacturer for 9,000 balls. App. Addl. Response, App. exh. 1, App. Email to GPO, Apr. 19, 2022 (7:37 a.m.) at 2; *id.*, App. Email to GPO, Apr. 19, 2022 (7:47 a.m.) at 1. Appellant also included “photographs of the prior to production proofs” that appellant stated “are going out this week.” *Id.*, App. Email to GPO, Apr. 19, 2022 (7:37 a.m.) at 2. Appellant added that GPO should “[n]ote the size of the imprint is much larger, as the customer required.” *Id.* Appellant also stated that, “[t]his morning the manufacturer said the balls will ship in mid[-]June 2022.” *Id.*

GPO’s regional manager responded to appellant that, “[t]his order was awarded to your firm in June 2021 and you’re now proposing a final ship date in June 2022—approximately one year later.” App. Addl. Response, App. exh. 1, GPO Email to App., April 19, 2022 at 1. GPO advised appellant that “[u]nless you can confirm a ship and delivery date in May 2022, this contract will be terminated for default and your firm charged the excess procurement cost.” *Id.* (emphasis in original). GPO further specified that Eagle Group must “provide this confirmation by [close of business] tomorrow, April 20, 2022.” *Id.*

After appellant failed to provide GPO with the requested confirmation by April 20, 2022, the contracting officer moved forward with terminating Eagle Group’s contract for default. In particular, on April 22, 2022, the contracting officer advised Eagle Group by letter that the contract had been terminated for default due to Eagle Group’s “failure to deliver the order in strict accordance with the specifications.” R4, Tab 12, Termination for Default at 1. The contracting officer advised that this letter was his final decision. *Id.*

## DISCUSSION

### Appeal and Motion for Summary Judgment

Eagle Group filed a timely notice of appeal of the contracting officer's final decision to terminate the contract for default on May 2, 2022, and a complaint on June 3, 2022. GPO filed a motion for summary judgment on July 29, 2022, contending that there is no genuine issue as to any material fact, and that it is entitled to judgment as a matter of law.

A motion for summary judgment is appropriate where there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In considering a motion for summary judgment, the Board will view the evidence and any disputed factual issues in the light most favorable to the party opposing the motion. *Colonial Press Int'l, Inc.*, GAO CAB No. 2008-6, 20-1 BCA ¶ 37560. The party opposing summary judgment, however, must show an evidentiary conflict on the record; mere denials or conclusory statements are not sufficient. *SRI Int'l v. Matsushita Elec. Corp. of Am.*, 775 F.2d 1107, 1116 (Fed. Cir. 1985).

Pertinent here, when a termination for default is appealed, the government has the initial burden of proving that the termination was justified. *Lisbon Contractors, Inc. v. United States*, 828 F.2d 759, 763-64 (Fed. Cir. 1987); *Montage, Inc. v. Architect of the Capitol*, GAO CAB No. 2006-2, 10-2 BCA ¶ 34,490 at 170,099. It is well settled that a termination for default is a "drastic sanction . . . which should be imposed (or sustained) only for good grounds and on solid evidence." *J.D. Hedin Constr. Co. v. United States*, 408 F.2d 424, 431, 187 Ct. Cl. 45 (Ct. Cl. 1969); *Brandywine Prosthetic-Orthotic Serv., Ltd.*, VABCA No. 3441, 93-1 BCA 25,250. When a default action is challenged, the government bears the burden of establishing by a preponderance of the evidence that there were grounds for the default termination and that the contracting officer's actions were justified. *System Dev. Corp.*, VABCA Nos. 1976R, 2354R, 87-3 BCA ¶ 20,167.

If the government demonstrates that the termination was justified, then the burden shifts to the contractor to show that its nonperformance was excusable. *Keeter Trading Co., Inc. v. United States*, 79 Fed. Cl. 243, 253 (2007); *Montage, Inc.*, *supra* at 170,100. For nonperformance to be excusable, it must be beyond the reasonable control of the contractor and without fault or negligence. GPO Contract Terms, Contract Clause 20(c); see *General Injectables & Vaccines, Inc. v. United States*, 519 F.3d 1360, 1363 (Fed. Cir. 2008). A termination decision will not be reversed unless the contractor can prove that the decision represents an abuse of discretion or was arbitrary and capricious. *Darwin Constr. Co. v. United States*, 811 F.2d 593, 597 (Fed. Cir. 1987).

As set forth below, we find that GPO has demonstrated that the termination for default was reasonable and that appellant has not shown that its nonperformance was excusable. We uphold the termination for default, grant the motion for summary judgment, and deny this aspect of the appeal.

As an initial matter, as a general rule, the government is entitled to insist on strict compliance with unambiguous contract specifications and need not accept a nonconforming product. *Cascade Pac. Int'l v. United States*, 773 F.2d 287, 291 (Fed. Cir. 1985). Here, there is no dispute that the appellant failed to deliver any baseballs by the initial delivery date of September 2021. The agency then extended the delivery date, but the initial partial quantity of baseballs delivered by Eagle Group in March 2022 were noncompliant with the purchase order specifications, in that some of the text printed on the baseballs was too small and did not meet the standard of what was required by the purchase order. See R4, Tab 1, Purchase Order at 003 (“Black imprint - 2 logos and one line of type between the logos. Image wraps around the ball.”). There is also no dispute that appellant printed and shipped the noncompliant baseballs without providing respondent with preproduction samples of the baseballs, and thus, prior to receiving approval from respondent contrary to the terms of the purchase order, including the warning that “Manufacture of the final product prior to approval of the sample submitted is at the contractor’s risk.” *Id.* at 006. The appellant also subsequently failed to timely deliver the remaining significant balance of the required baseballs. On this record, we find that the appellant breached the material terms of the contract and that the agency was therefore entitled to terminate the contract for default.

The record further reflects that Eagle Group was given a reasonable opportunity to remedy the failure to deliver the required baseballs even after the initial delivery date was missed. Eagle Group did not do so. On January 24, 2022, the contracting officer issued a Show Cause letter to Eagle Group, advising that GPO was “considering terminating the contract] under the provisions for default of this contract” for “failure to deliver the total quantity on September 1, 2021.” R4, Tab 7, Show Cause Letter at 017. Thereafter, the agency gave appellant multiple opportunities to provide confirmation that the baseballs would be delivered by May 2022. See R4, Tabs 2-11, Email Correspondence between GPO and App. at 009-026; App. Addl. Response, App. exh. 1, Email Correspondence between GPO and App. at 1-7. Instead, appellant delivered a partial order of nonconforming baseballs and then provided confirmation of delivery of the remainder of the order in June 2022. App. Addl. Response, App. exh. 1, App. Email to GPO, Apr. 19, 2022 at 2. Such failure to comply with contract specifications, and to promptly replace or correct rejected work, justifies a termination for default. GPO Contract Terms, Contract Clause No. 14(h), Inspection and Tests; *Tribute Contracting, LLC*, GAO CAB No. 2014-03.

Eagle Group maintains that, regardless of whether it breached the terms of the contract, GPO improperly terminated the contract for default in April 2022 because it had advised appellant that “the balls needed to be delivered in May 2022 or [the] contract would be terminated.”<sup>7</sup> App. Addl. Response at 1. We find that appellant’s assertion is not

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<sup>7</sup> Appellant also initially asserted in its Complaint that it received an email from GPO in May 2022 stating that “the USDA must have the balls in June of 2022” and that “[appellant] agreed.” Complaint at 1. Appellant, however, did not continue with this argument in responding to GPO’s motion for summary judgment. App. Resp. to Mot. For SJ at 1. Instead, appellant argues only that the baseballs “needed to be delivered in May 2022 or [the] contract would be terminated.” App. Addl. Response at 1; App. Resp. to Mot. For SJ at 1. To the extent appellant maintains that it received an email



consistent with the contemporaneous record. As the record reflects, the initial delivery date was September 1, 2021. When this delivery date was not met, email correspondence between appellant and respondent shows that Eagle Group was asked to provide written confirmation from the Chinese manufacturer by April 18, 2022, affirming that the baseballs were in production and would be delivered in May 2022; appellant was told that if it could not provide such written confirmation stating that the baseballs were in production and would be delivered in May 2022, then the order would be terminated for default. See R4, Tabs 2-11, Email Correspondence between GPO and App. at 009-026; App. Addl. Response, App. exh. 1, Email Correspondence between GPO and App. at 1-7.

Instead of providing respondent with the requested confirmation, on April 18, Eagle Group emailed “nothing from China today” and “[h]opefully soon.” App. Addl. Response, App. exh. 1, App. Email to GPO, Apr. 18, 2022 at 3. Even accepting the facts as alleged by appellant--which assumes a proposed contract modification by GPO of the contract delivery date to May 2022--the appellant does not demonstrate that it ever notified GPO that the baseballs from the Chinese manufacturer would be delivered in May 2022. Rather, the record indicates that when Eagle Group finally provided confirmation of the order from the Chinese manufacturer to GPO on April 19, appellant’s email providing the confirmation told GPO that “the manufacturer said the balls will ship in mid[-]June 2022.” *Id.*, App. Email to GPO, Apr. 19, 2022 at 2. As a result, respondent issued the termination for default on April 22, 2022. R4, Tab 12, Termination for Default at 027.

The record on its face clearly indicates that production and delivery of the noncompliant baseballs and failure to timely deliver the remainder of the baseballs resulted from appellant’s failure to comply with explicit requirements of the purchase order with regard to both printing and shipping, not from any delay or other misfeasance by respondent. Although GPO provided Eagle Group multiple opportunities to cure its failure to meet the material terms of the contract, appellant did not take this opportunity by confirming that it would satisfy respondent’s alternative delivery date. We conclude that there is no genuine issue as to any material fact and that GPO is entitled to judgment as a matter of law. Respondent’s motion for summary judgment concerning default termination is granted. This aspect of the appeal is denied.

### **Request for Payment for Partial Delivery of Baseballs**

By email dated September 8, 2022, appellant asserts that it provided the Forest Service with a partial delivery of approximately 3,000 baseballs, for which it has not been paid. Appellant requests that “GPO pay for the 3000 balls that were delivered in good order to the [Forest Service] on [March 10, 2022]” or that respondent “send [the balls] back in

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from GPO in May 2022--after GPO had terminated the contract for default--stating that it could deliver the baseballs in June 2002, the appellant has failed to demonstrate the existence of any such correspondence and we find no other evidence in the record that supports appellant’s assertion.

full,” noting that “[e]ither way, the balls need to be accounted for.”<sup>8</sup> App. Resp. to Mot. For SJ at 1. Respondent maintains, and the appellant does not dispute, that appellant has not submitted a final claim to the contracting officer for such payment. GPO Resp. to Board’s Follow-up Questions at 1; App. Resp. to Board’s Follow-up Questions at 1.

The Contract Disputes Act (CDA) provides that “[e]ach claim by a contractor against the Federal Government relating to a contract shall be submitted to the contracting officer for a decision.” 41 U.S.C. § 7103(a)(1). For the Board to possess jurisdiction under the CDA, “the contractor must submit a proper claim—a written demand that includes (1) adequate notice of the basis and amount of a claim and (2) a request for a final decision.” *M. Maropakis Carpentry, Inc. v. United States*, 609 F.3d 1323, 1328 (Fed. Cir. 2010). In addition, the contractor must have received the contracting officer’s final decision, or a deemed denial, on that claim. *Id.* None of appellant’s assertions regarding the 3,000 baseballs were presented to the contracting officer in a claim and, as a result, the contracting officer never had the opportunity to consider them and issue a final decision from which Eagle Group could appeal to the Board. Accordingly, the Board lacks jurisdiction to consider this matter. 41 U.S.C. § 7103(a)(1); *Maropakis*, 609 F.3d at 1328. See also Rules of Procedure of the Government Accountability Office Contract Appeals Board, Oct. 14, 2008, at iv (the jurisdiction of the Board extends to “appeals from decisions of contracting officers with respect to any contract entered into by a legislative branch agency.”); see also *id.*, Rule 3a (a notice of appeal “shall identify . . . decision from which the appeal is taken”).

Here, appellant has failed to demonstrate, or even allege, that a contracting officer’s final decision has been issued (or even sought) and our review of the record indicates none. This aspect of the appeal therefore lacks a necessary prerequisite by first obtaining a contracting officer’s final decision for the Board’s jurisdiction. Consequently, since this issue has not been the subject of a contracting officer’s final decision it is not properly before the Board. Accordingly, this aspect of the appeal is dismissed.

## CONCLUSION

For the reasons set forth above, we GRANT respondent’s motion for summary judgment with respect to default termination, and DISMISS the aspect of the appeal pertaining to payment for the partial shipment of baseballs. As such, we DENY in part and DISMISS in part the appeal.

Dated: July 28, 2023

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<sup>8</sup> The Board notes that respondent disputes the number of baseballs that were delivered. Respondent maintains that it did “not receive[ ] 3,000 baseballs,” but instead “received 83 packages of 12 (996).” Resp. Answer to Board’s Follow-up Questions at 1. The resolution of this disputed issue of fact, however, is not relevant to our decision set forth herein because appellant never submitted a claim for the partial order to the contracting officer.

/s/ Heather Kilgore Weiner  
HEATHER KILGORE WEINER  
Presiding Member

We concur:

/s/ Jonathan L. Kang  
JONATHAN L. KANG  
Member

/s/ Evan D. Wesser  
EVAN D. WESSER  
Member