

_____)	
Eagle Group Sportswear, Inc.)	
)	
Appellant)	
)	CAB No. 2021-02
v.)	
)	
Government Publishing Office,)	
)	
Respondent)	
_____)	

ORDER OF DISMISSAL

1. On June 22, 2021, Eagle Group Sportswear, Inc. (Eagle Group), submitted an email that was treated as a Notice of Appeal of a June 10 contracting officer’s final decision issued under a Government Publishing Office (GPO) contract (Jacket 571-125, Purchase Order P9634), as CAB No. 2021-02. The contracting officer’s final decision terminated the contract for default.
2. On July 7, the Government Accountability Office (GAO) Contract Appeals Board (CAB, or Board) issued a Docketing Notice by email to Eagle Group and GPO. The Docketing Notice directed the Appellant to file its Complaint within 15 days of receipt of the Docketing Notice. The Notice also advised as follows: “As set forth in Rule 5(a), in the event that the complaint is not filed within the time stated above, the appeal may be dismissed by the Board for lack of prosecution.”
3. Rule 5(a) of the CAB Rules states: “Complaint – Within 15 days after receipt of the docketing notice from the Board, or within such other period of time as may be established by the Board, the appellant will file with the Board, if not previously filed with the notice of appeal, a complaint setting forth simple, concise, and direct statements of each of its claims showing that it is entitled to relief; identifying the contract provision or provisions under which relief is claimed; and stating the amount in controversy or an estimate thereof, if known, and/or the relief requested. The complaint shall be limited to those requests for relief which have been presented to the contracting officer and were either denied or not ruled upon by the contracting officer in accordance with Rule 3. No technical form is required, but each claim should be separately identified. In the event that the complaint is not filed within the

time stated above, the appeal may be dismissed by the Board for lack of prosecution.” GAO CAB Rule 5(a).

4. Based on the Docketing Notice’s date of July 7, Eagle Group’s Complaint was due by July 22 (GAO CAB Rule 28 establishes that “days” refers to calendar days unless otherwise specified).
5. On July 23, GPO filed a dismissal request based upon Eagle Group’s failure to file its Complaint by the July 22 deadline.
6. On July 24, Eagle Group filed a response opposing GPO’s dismissal request: the Eagle Group response essentially consisted of the addition of cursory comments to an Eagle Group/GPO pre-termination email chain. The Board subsequently elected to consider this submission to be Eagle Group’s Complaint.
7. On January 31, 2022, the Board held a conference call and informed the parties that it had then elected not to dismiss the appeal for Eagle Group’s failure to timely file its Complaint. The Board nevertheless informed Eagle Group that a more detailed explanation of Appellant’s statement of claims was required to prosecute the appeal.
8. On February 18, GPO filed a Motion for Summary Judgment with the Board (the motion was emailed on February 17 at 7:13 pm, and was considered filed the next business day, see GAO CAB Rule 28).
9. On February 18, the Board established a deadline of March 4 for Eagle Group’s response to GPO’s Motion for Summary Judgment. Eagle Group failed to comply with the March 4 deadline and on March 9, GPO requested that the Board rule on its Motion for Summary Judgment.
10. On March 10, the Board directed Eagle Group to show cause (by March 15) why the appeal should not be dismissed with prejudice for lack of prosecution.
11. On March 11, Eagle Group responded to the Board’s show cause notice. The Appellant did not explain here why it had failed to respond to GPO’s Motion for Summary Judgment by the established March 4 deadline; rather, Eagle Group responded to GPO’s Summary Judgment Motion.
12. Whenever the record discloses the failure of an appellant to timely file documents required by the Board’s Rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the pursuit of an appeal, the Board may dismiss an appeal for the failure to prosecute. See GAO CAB Rule 5(a); see also *Eijad Shafer Constr. Material Co.*, ASBCA No. 62149, Apr. 7, 2021, 21-1 BCA ¶ 37834; *Network Global Logistics, LLC*, ASBCA No. 62345, Jan. 6, 2021, 21-1 BCA ¶ 37782. It is, after all, an appellant’s obligation to advance its own appeal.

13. Here, the record reflects Appellant's repeated failure to file submissions by the established deadlines. Instead, the record reflects that Appellant's filings have routinely occurred only as a result of motions to dismiss (for failure to comply with established deadlines) and/or show cause notices issued by our Office. Based on Appellant's repeated failure to comply with established deadlines, and timely advance its legal action, the Board concludes that the Appeal should be dismissed with prejudice for lack of prosecution.¹

¹ In any event, we also find that the Appellant did not meaningfully respond to the Respondent's Request for Summary Judgment Motion, and therefore find that granting the Motion would be proper in the event we did not dismiss the Appeal for lack of prosecution. Among other things, the contract required: the submission of virtual proofs of the hat's front and back logos by June 4, 2021; a tan-colored "leather patch logo . . . debossed [(i.e., depressed)] with black imprint;" and that the patch be sewn on "with visible stitches." Rule 4 (R4), Tab 8, Contract at 2-3. The record reflects that on June 9, the contracting officer issued a cure notice to Eagle Group for failure to submit virtual proofs by the contract's June 4 deadline. R4, Tab 9, Cure Notice. While Eagle Group contends that the virtual proof deadline was "unrealistic," it does not dispute either that the contract established such a deadline or that the Appellant failed to meet it. Also, as part of its cure notice reply, Eagle Group included exchanges with its emblem subcontractor which indicated the use of a laser-etched imprint "(etching will be dark but may not be black)" and "a faux stitch around the inside edges of the patch." R4, Tab 10, Eagle Group Cure Notice Reply at 2.

The contracting officer subsequently terminated the contract for default because of Eagle Group's failure to comply with the contract specifications, specifically, that the leather patch was to be sewn on with visible stitches and not applied by heat, and that the patch was to be debossed with black imprint and not etched with contrast color. R4, Tab 16, Termination Notice. Although Eagle Group argues that it intended to use actual stitching, Appellant Response to Board's Show Cause Notice at 1, it does not deny providing the Respondent with information indicating otherwise concerning the "faux stitch." Moreover, while Eagle Group contends that "GPO never intended to use a debossed leather patch with black imprint," and that "[i]n order for the patch to have a black imprint is must be la[s]jer[-]etched," Appellant Response to Board's Show Cause Notice at 1, an agency is generally entitled to strict compliance with contract specifications. *TEG-Paradigm Env'tl., Inc. v. United States*, 465 F.3d 1329, 1342 (Fed. Cir. 2006). Thus, in light of Appellant's failure to comply with all contract requirements, including the contract's specifications regarding the required front logo leather patch, we would therefore find that the Respondent's termination decision was proper, and that granting the Request for Summary Judgment would be appropriate.

IT IS SO ORDERED.

Louis A. Chiarella

Louis A. Chiarella
Presiding Member
GAO Contract Appeals Board

Dated: May 9, 2022

cc: Todd Baker
Eagle Group Sportswear, Inc.

James Goodman III, Esq.
Government Publishing Office