

“OK TO PRINT” DOES NOT ALWAYS MEAN OK TO PRINT

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GPO vendors are getting used to the fact that the rules or industry practices in the private sector are often not applicable to GPO contracts.

This certainly seems to be the case in the area of proof approvals. In the private sector, the industry has generally taken the position that an approval of a proof by a customer constitutes authorization for the printer to produce the product exactly as it appears in the proof. If there are errors later discovered, printers have generally been successful in taking the position that the customer approved the product with the errors—whether they were created by the customer or the printer—and therefore the printer is not responsible for the errors which appeared in the approved proof.

In GPO contracts, the application of the “OK to print” or proof approval rule has been much less clear. In most situations at GPO, cases where an error in the final product also appeared in the approved proof have been resolved on a case by case basis with the contracting officer. In many situations, the contractor prevailed, and the product was either accepted with the error or the contractor was paid to reprint it correctly; in other situations, where the contractor was responsible for the creation of the error in the proof, and it was not obvious, the contractor has been forced to reprint the order or take a discount; finally, in some circumstances, both sides have accepted some responsibility, and the financial adjustments on the contract reflect that both the government and printer were partially at fault.

The GPO Board of Contract Appeals recently examined the responsibilities and liabilities for proof approval, but was unable to come up with a concrete rule which would be applicable to all circumstances. Instead, the Board decided that whether or not a proof approval will absolve the printer from a liability for errors on the proof (and in the final product) depended on the facts and circumstances of the case. *Harmony Printing and Development Company*, GPO BCA 05-96, July 13, 1998. In *Harmony*, the Board laid out the following general rules:

1. In contracts requiring proofs and “OK to print” proof approval, a contractor printing in advance of the proof approval or “OK to print” is responsible for the consequences and any errors. This is true even where the error results from the government’s mistake, or the government’s desire to make a change. If the contractor prints before receiving a “revise and proceed”¹ or proof approval or “OK to print,” on the last or final proof, the contractor will be required to reprint the work or correct the work at its expense.
2. Where the government approves the proofs and issues a “revise and proceed” or “OK to print,” the GPO, not the contractor, bears the risks of errors in the proofs *in most*

¹ Where “revise and proceed” is used, we are assuming the requested revisions are correctly made before the printer proceeded to print.

cases. Thus, the Board determined that if an error in the approved proofs is discovered, or the agency wanted to make a change and it did not, the government cannot refuse to pay for what the contractor produced if it matches the approved proofs. However, the Board indicated that this general rule must be modified by the facts and circumstances of each case.

3. Press sheet approvals or “OK to print” authorizations do not cover the paper stock, and finding later that the stock did not comply with specs is not affected by a “OK to print.”
4. Of critical importance in our digital age, the Board held that where the government furnishes copy on magnetic media, which it has carefully checked for errors, and the printer creates a typesetting error in outputting the magnetic media, the GPO’s approval of a proof containing the error does not make the government responsible for the error, because it had no reason to check the text portion of the proofs. However, the Board also made it clear that where the original error was contained in the government’s furnished materials—whether electronic or other materials—the government was responsible for typographical or other errors in the proof which it did not catch.
5. In situations where the contractor is setting type or doing design, layout or changes, the Board stated that “where the government knows or should know of aspects of the job that should be checked or verified and this can be done by examining the proofs, the government’s obligation is to take those aspects into account when reviewing the proofs, and whether it does so or not, its approval of the proofs will operate to shift the risk to the government if a problem with any of those aspects is subsequently discovered.” *Harmony*, at page 7.

It is now clear that contractors cannot rely on the GPO or the agency to catch character conversion or similar errors which may have occurred when the contractor output or converted the electronic file. The GPO can assume that, if the file was correct, neither it nor the agency should have to re-review the proof for non-obvious errors, such as typographical mistakes. From the Board’s Opinion, it appears that major errors, such as misplacement of an image or missing images remain the responsibility of the government on proof approval, no matter who created the error.

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