

# It's Too Late to Say You're Sorry

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In June 2012, the Government Printing Office issued an invitation for bids to print English and Spanish-language versions of a pamphlet called “Medicare and You,” commissioned by the Department of Health and Human Services. Colonial Press International was one of nine companies that bid. But although regulations normally require that the Government grant the contract to the lowest bidder—which was Colonial—here the Government granted the contract to another printing company, Fry Communications, citing concerns about Colonial’s reliability.

Colonial challenged the decision in the U.S. Court of Federal Claims, but lost and appealed to the U.S. Court of Appeals for the Federal Circuit. On appeal Colonial argued that the Government should have considered Colonial’s past performance over a thirteen-month period (where over 94% of its deliveries were timely), and that the Government had erred when it only considered the last three months (where Colonial had three late deliveries). The Federal Circuit rejected this argument, noting that whether viewed as a thirteen-month or a three-month period, Colonial had late deliveries, while Fry Communications had none. Nor was the Government required to accept Colonial’s explanations of those late deliveries:

*The ability to comply with proposed delivery schedules was an important and mandatory consideration for the contracting officer. Merely because some explanation was provided for Colonial Press’s late deliveries does not mean the contracting officer was required to accept these explanations, nor did it change Colonial Press’s historical past performance. Instead, the contracting officer had discretion to state that, after considering the evidence on both sides, she found the bidder non-responsible.*

Read the full decision [here](#).