



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: GraphicData, Inc.—Quantum Meruit Relief

File: B-262251

Date: July 15, 1996

DIGEST

A GPO contractor whose claim for unpaid services was denied by the contracting officer for failure to meet a contract provision requiring requests for billing adjustments to be submitted within 60 days of payment appeals the denial on equitable grounds. The claim is denied. To allow recovery based on the doctrine of quantum meruit or other equitable grounds would circumvent a provision of the contract, the purpose of which is to require requests for billing adjustments to be submitted to the contracting officer within a reasonable time after a payment is made.

DECISION

GraphicData, Inc. (GraphicData) claims \$11,177.95, for printing work provided to the Government Printing Office under a contract that GraphicData states it failed to invoice. As discussed below, the claim may not be paid.

BACKGROUND

The GPO awarded a requirements contract (Purchase Order 94547) to GraphicData to produce U.S. Trademark Registration and Updated Registration Certificates for the period April 1, 1994 through March 31, 1995. Under this contract, GraphicData invoiced its orders on a weekly basis. On March 29, 1995, GraphicData submitted a voucher requesting adjustments to 48 paid invoices that had been submitted from May 3, 1994 to March 28, 1995 for 14,643 photoprints at \$1.09 per photoprint (\$15,960.87) that were shipped to GPO, but which GraphicData claims had not been previously invoiced.

Clause 24 of GPO's Contract Terms (GPO Publication 310.2) states, in relevant part:

"(b) Checks tendered by GPO in payment of any invoice submitted by the contractor, whether equal to or less than the amount invoiced, are tendered as final payment. Acceptance of payment of any check so tendered shall operate as a bar to the assertion of any exceptions by

the contractor to the amount paid by GPO unless the contractor notifies the Contracting Officer in writing within 60 calendar days of the date of such check. Such notice shall specify the exceptions taken to the sum tendered, and the reasons therefor."

Based on this clause, the contracting officer agreed to adjust only those invoices that had been paid within the last 60 days, which reduced the amount of GraphicData's claim to \$11,177.95. GraphicData asked the contracting officer to reconsider this decision. On June 27, 1995, the contracting officer issued his final decision, denying the remainder of GraphicData's claim and advising GraphicData that it may appeal the decision to the GPO Board of Contract Appeals within 90 days of the date of the decision.

Instead of appealing the contracting officer's decision to the Board, GraphicData submitted a claim with this Office, asserting that it is entitled to equitable relief under the doctrine of quantum meruit for the unpaid 10,255 photoprints. Essentially, it argues that since the 10,255 photoprints were not billed under the contract, these items are outside of the contract and it would be inequitable for GPO not to pay for them.

OPINION

Under the doctrine of quantum meruit, payment may be authorized for services provided by one party to another party without a valid written contract when certain conditions are met. See 64 Comp. Gen. 727 (1985); Drone-Mueller & Associates, B-251481, Feb. 23, 1993. The basis for allowing recovery despite the absence of an express contract is to prevent unjust enrichment. Where, however, there is an express contract between the parties, and a provision of that contract expressly precludes payment for the additional services or goods claimed, no matter how harsh the agreement, there can be no recovery. Industrial Dredging & Engineering Corporation v. Southern Indiana Gas & Elec. Company, 840 F.2d 523 (7th Cir. 1988); J.A. Moore Const. Co. v. Sussex Associates LTD., 688 F. Supp. 983 (D. Del. 1988).

Here, there is a contract between the parties, and that contract expressly provides that payment by GPO of any invoice submitted by the contractor is tendered as final payment and shall operate as a bar to the assertion of any exceptions by the contractor to the amount paid by GPO, unless the contractor notifies the contracting officer in writing within 60 calendar days of such payment. GraphicData has not contended, nor do we find, that the contracting officer knew, or should have known, before being notified by GraphicData that it had not billed for some of the photoprints furnished to GPO.

Thus, GraphicData's claim simply boils down to a contention that its claim should be paid despite its failure to meet the 60-day time limit for seeking billing adjustments, because it would be unjust not to pay the claim. The claim ignores the fact that the purpose of the 60-day provision is to require a request for a billing adjustment to be submitted within a reasonable time after the contractor has received a payment. GraphicData agreed to this provision when it entered into the contract. As the courts have held, a contractor may not use equitable doctrines to circumvent an express provision of a contract. The existence of an express contract precludes recovery on an implied contract theory covering the same subject matter. See J.A. Moore Const. Co., supra at 988; 42 C.J.S. Implied Contracts § 39.

Finally, GraphicData alleges--but offers no evidence--that GPO has granted other contractors adjustments to invoices outside the 60-day period stated in the contract. However, the claimant has not furnished any specific instances where GPO has waived the 60-day provision. Thus, there is no basis to conclude that the agency should have waived the 60-day provision in this case.

Accordingly, the claim is denied.

Robert P. Murphy
General Counsel