

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

61181

FILE: B-186431

DATE: July 22, 1976

MATTER OF: Pope & Talbot, Inc.

UA 7883-97883

DIGEST:

Claimant may not be paid expenses incurred in repairing access road since it was not required to perform such work under timber sale contract and quantum meruit recovery is precluded because there was no contract implied-in-fact as claimant was mere volunteer.

The Department of Agriculture Forest Service has submitted the claim of Pope & Talbot, Inc., for our review. The claim is for costs incurred in repairing an access road under the Coffee Stone Timber Sale, contract No. 02300-2.

The contract provided, in pertinent part, that Pope & Talbot develop and maintain road No. 2231-B. The road was accepted by the Forest Service on September 12, 1973. Under the terms of the contract, Pope & Talbot was still required to perform ordinary maintenance and repair any damage caused by the logging operations. Any repairs of an extraordinary nature are not included in the road maintenance provisions.

During the winter of 1973-74, numerous major slides and one large slip-out occurred on the road making it impassable. The Forest Service acknowledged that the road damage was its responsibility, but did not respond timely in opening the road. By September 1974, the repair work had not been started. Pope & Talbot decided to perform the repair work, even though not bound to do so, as the alternatives were less desirable. The repair work was not ordered nor requested by the Forest Service either verbally or in writing.

The claim is essentially quasi-contractual in nature, as the work performed by Pope & Talbot was not covered by the existing contract. The law is well settled that the United States may be liable on implied-in-fact contracts. See, e.g., Hickman v. United States, 135 F.Supp. 919 (W.D. La. 1955). In 55 Comp. Gen. 768, 777 (1976), we stated:

"* * * A contract implied in fact is one founded upon a meeting of minds, which although not embodied in an express contract, is inferred, as a fact from the conduct of the parties showing, in the light of surrounding circumstances, their tacit understanding. See Porter v. United States, 496 F.2d 583, 590, 204 Ct. Cl. 355, cert. denied, 95 S. Ct. 1446 (1974); Stewart Sand and Material Co. v. Southeast State Bank, 318 F.Supp. 870, 874 (D. Mo. 1970). Where the contractor acts gratuitously in incurring costs with only the mere hope that a contract may subsequently be entered into with the United States, reimbursement has been denied. See Wells v. United States, 463 F.2d 434, 199 Ct. Cl. 324 (1972). * * *"

In the case at hand, Pope & Talbot was given three alternatives by the Forest Service:

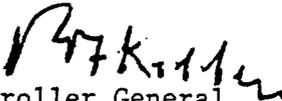
1. Use an alternate haul route;
2. Request "Force Majeure" for the period the road was impassable; and
3. Wait until the Forest Service had funds available to repair the road.

Pope & Talbot timed the alternate haul route and found it would cost more to use the alternate route than to clear the road. The decision, then, to remove the slides and repair the road was based upon the economics of the situation. From the record provided, it is plain that there was no commitment (expressed or implied) given by any authorized official to Pope & Talbot for performance of the work.

The mere rendering of services for a party does not give rise to an implied contract. Weitzel v. Brown-Neil Corp., 152 F.Supp. 540 (W.Va. 1957). But rather, the circumstances under which the services are rendered must be such as to raise the inference of a promise to pay. Where services are rendered to the Government without its knowledge or request, it must be held that such services were voluntary and that no contract implied-in-fact existed. See B-176498, October 2, 1973.

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In view thereof, no basis is presented to obligate the Government to provide compensation on a quantum meruit basis for the services furnished by Pope & Talbot. Accordingly, the claim is denied.


Deputy Comptroller General
of the United States