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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-193738

DATE: MAR 8 1979

MATTER OF: Naval Facilities Engineering Command in re
Troy W. Blair

[Disallowance of Claim for Unauthorized Services]
DIGEST:

1. Generally, the existence of valid express contract for services precludes recovery under an implied contract covering same subject matter.
2. Payment for unauthorized services on basis of quantum meruit may not be allowed in absence of ratification by responsible Government officials.

DLG 019900201V

The Naval Facilities Engineers' Command has requested a decision by our Office on the doubtful question of law whether Troy W. Blair (Blair) may be paid \$3,713.61 on a quantum meruit basis for janitorial services performed. P.A.

DLG 01201

The record shows that contract No. N62474-76-C-5136 was awarded to First Class Maintenance (First Class), a sole proprietorship of J. F. Trapp, on October 17, 1975, for janitorial services at the Naval Air Station, Miramar, San Diego, California, for a total bid of \$45,770. On November 25, 1975, all monies due or to become due under the contract were assigned by J. F. Trapp to Bonita Financial Corporation (Bonita) in accordance with the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 203, 41 U.S.C. 15.

DLG 01200

DLG 01202

During February 1976, Mr. Trapp furnished the officer in charge of construction (OICC), Miramar, with a copy of a contract, dated February 18, 1976, whereby Blair allegedly undertook to loan \$4,000 to Mr. Trapp and Mr. Trapp named First Class and Miramar Janitorial Services as collateral for the loan. Thereafter, late in February 1976, Mr. Trapp disappeared and performance of the janitorial services ceased. On or about February 25, 1976, prior to termination action, Blair appeared at the job site, and advised the OICC that he had taken over the business of First Class.

DLG 01237

The only supporting evidence in the file is the loan contract with the named collateral and an undated "bill of sale", signed only by V. C. Trapp, d/b/a Miramar Janitorial Service, purporting to sell to Wayne Blair in consideration of \$4,000, certain "accounts", the "capital equipment; all current miscellaneous equipment and supplies at each account", and other specified capital equipment. When the Naval Facilities Engineering Command became aware that Blair had not

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purchased the company, but, at most, had an invalid assignment of the account, Blair was notified to leave the site and Final Decision No. 76-37, dated March 24, 1976, was issued to First Class terminating the contract for default. Blair performed services from February 25, 1976, to March 23, 1976, for which compensation of \$3,713.61 is claimed.

A successor contract for \$33,300, was procured through competition and awarded to Services Unlimited. That contract has been fully paid.

There is no evidence in the record of any express contract with Blair. The performance by Blair was therefore either under the express contract with First Class or under an implied contract.

The record indicates that Blair entered into performance as purchaser either of First Class or of its contract, and the services were originally accepted by Navy as performance under the contract with First Class. However, nothing is due Blair under that contract since all payments earned had previously been validly assigned to Bonita, and have been paid to Bonita less damages for breach of contract, plus a sum withheld at the request of and transferred to the Department of Labor to cover claims of employees of First Class for back wages.

In appropriate circumstances, the courts and our Office have allowed the payment of the reasonable value of services performed on the basis of quantum meruit. See Planned Communications Services, Inc., B-191476, May 31, 1978, 78-1 CPD 408. Recovery on quantum meruit is premised on implied contract. See GKS, Inc., B-187593, June 26, 1978, 78-1 CPD 461. As a general rule, the existence of a valid express contract for services precludes recovery under an implied contract covering the same subject matter. See 98 C.J.S., Work & Labor, Section 27, page 756; National Trailer Convoy, Inc. v. United States, 345 F.2d 573 (Ct. Cl. 1965).

Assuming, on the other hand, that Blair did not perform the janitorial services under the express contract with First Class, in order to recover on a quantum meruit basis under an implied contract it must be shown not only that the Government benefited from the performance of the services, but also that the implied contract was ratified by an authorized official. In a letter dated June 15, 1978, to our Office, Mr. Blair states that the Department of the Navy considers the services to have been performed as "a volunteer and not entitled to compensation". In the absence of ratification by the authorized officials of the Navy, our Office cannot agree to payment of the claim on the basis of quantum meruit. See Moore's Auto Body & Paint, Inc., B-189304, August 2, 1977, 77-2 CPD 72.

The claim was disallowed

B-193738

3

Accordingly, on the basis of the present record the claim for \$3,713.61 may not be allowed.

R.F. KELLER

Deputy  Comptroller General
of the United States