

DECISION



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

FILE: B-215792 DATE: January 8, 1985
MATTER OF: Patton Reading Services, Inc.

DIGEST:

1. GAO will disallow a claim based on the allegation that a contract was improperly terminated where there is no evidence that a formal contract was executed and the record does not clearly indicate that the government intended to be bound.
2. GAO will not authorize payment on a quantum meruit basis for expenditures incurred in anticipation of future purchase orders, because the government has not benefited from these expenditures.

Mrs. Barbara Patton, the sole proprietor of Patton Reading Services, Inc., claims amounts allegedly due her under a contract purportedly executed in the fall of 1983 by the Department of the Navy's Pacific Missile Test Center, Point Mugu, California, and now improperly terminated. The purported contract covered instruction of an English course for employees to whom English is a second language. Mrs. Patton seeks payment for a 4-week period during which she was not employed as a result of the termination plus reimbursement of \$1,575 for expenses incurred in anticipation of the continuation and expansion of the course.

We find Mrs. Patton's claim to be without merit.

Background:

In September 1983, Mrs. Patton presented a proposal to the Navy for a course entitled "Integrating English Language Development and Content Areas." The course was designed to provide Navy employees with the skills required to perform in an English-speaking society. The proposal

consisted primarily of an extensive outline that detailed the objectives, material requirements, length, and cost of the course. As stated in the outline, the course was to include an initial 4-week session for diagnostic testing, a second 4-week period for evaluation, and three 8-week sessions of instruction.

Following submission of this proposal, Mrs. Patton discussed the scope of the course and her qualifications with an employee at the Test Center's Career Development Division. This employee subsequently was designated as the course coordinator. The Career Development Division then issued three fixed-price orders to Mrs. Patton.^{1/}

The first order, which provided for the testing and evaluation of potential students, was issued on November 7, 1983; it covered 146 hours of services at a cost of \$7,280. The Navy states that due to uncertainty as to the actual length of time that would be required to complete this initial phase, the period of performance was set from November 14, 1983 to October 31, 1984. In fact, the entire 146 hours of services were performed in 8 weeks. The second order, issued on January 13, 1984, was also for 146 hours of services at a cost of \$7,280. This order was for the initial 8-week instructional session which was to be taught during the period from January 23, 1984 to March 16, 1984. The third order was not issued until April 9, 1984. This order was for 72 hours of instruction at a cost of \$9,915, to be performed during the 4-week period beginning on April 9.

While teaching the initial session, in addition to satisfying the requirements specified in the order, Mrs. Patton researched similar programs being conducted at various educational institutions, executed a lease agreement for a language lab, purchased items such as

^{1/}According to the Navy, these three orders were issued under authority of 5 U.S.C. § 4105 (1982), which authorizes agencies to make agreements for training of employees through non-government facilities. The regulations implementing this provision, Federal Personnel Manual, ch. 410 § 5-4 (Inst. 282), April 2, 1984, authorizes agencies to procure training from non-government facilities by negotiation. Neither the statute nor the regulations, however, permit the issuance of purchase orders on a non-competitive basis, as apparently occurred here.

cassette recorders and additional quantities of materials and texts, and hired support staff and instructional aides. Mrs. Patton maintains that she did all these things in reliance on conversations with the course coordinator. She states that she received oral assurances that the course would be continued and that she was encouraged to incur all expenses necessary to prepare for an expanded program.

The Navy contends that it was not aware of the additional expenses being incurred by Mrs. Patton. Upon becoming aware of them, the Navy states that it informed Mrs. Patton that they would not be underwritten by the government and that in order for her to recoup these costs, they would have to be included in future purchase orders.

The third order, issued April 9, 1984, reflects certain of the additional expenditures. However, other expenses, such as salaries of two aides hired during the first instructional session and \$1,575 apparently paid for additional material and texts, have not been reimbursed.

Mrs. Patton's Claim:

Mrs. Patton, although apparently believing she was contractually entitled to conduct courses until October 31, 1984, only claims payment for an additional 4-week period. Mrs. Patton refers to the first purchase order, which had an anticipated period of performance of 1 year, and as evidence that the government intended to enter into a year-long agreement, and cites assurances she allegedly received from the course coordinator that the program would be continued for a year and perhaps even expanded during this period. The Navy's decision to discontinue the course, she implies, is tantamount to an improper termination of this contract. Consequently, as indicated above, she claims that she is entitled to the salary she would have earned during the 4 weeks she was unemployed due to the improper termination, as well as the amount necessary to cover unreimbursed expenses.

The Navy maintains that it did not enter into a 1-year contract with Mrs. Patton. The three orders for services described above, the Navy states, were expressly limited to 146 hours, 146 hours, and 72 hours, respectively. These have been completed and paid in full. The Navy also contends that no assurances were given to Mrs. Patton concerning reimbursement for services not included in the three work orders. Accordingly, the Navy urges that the claims for additional salary and expenses should both be denied.

GAO Analysis:

As a general rule, the acceptance of a prospective contractor's offer by the government must be clear and unconditional, and it must be clear that both parties intended to make a binding agreement. See Marino Construction Co., Inc., 61 Comp. Gen. 269 (1982), 82-1 CPD ¶ 167. Usually the government expresses its acceptance by means of a document prepared and signed by a contracting officer. Here, Mrs. Patton does not allege that the Navy accepted her proposal by the execution of a formal written contract, and the only evidence in support of Mrs. Patton's position that a year-long contract was executed is the first purchase order.

The record does not support the inferences drawn by Mrs. Patton from the fact that the period of performance of this order was approximately 1 year. Clearly, the purchase order covered only 146 hours of instruction. The period of performance was deliberately made longer to ensure flexibility in a new and somewhat experimental program; it did not indicate that the government wanted additional services to be performed during this period. We therefore conclude that the only express contracts executed by the Navy and Mrs. Patton were the three purchase orders issued between November 1983 and April 1984 for a combined total of 364 hours of instruction.

Since an express contract for teaching the course for a full year was not executed, we will examine the intention of the parties to determine whether a binding oral agreement was nevertheless contemplated. See Motorola, Inc., B-191339, Oct. 19, 1978, 78-2 CPD ¶ 287. In determining whether a binding commitment existed in the absence of a written document, we focus on whether the actions of the government would lead a reasonable party to act without obtaining a written confirmation. Id.

We do not consider the conversations of Mrs. Patton with the course coordinator or any other individual as evidence of an informal, yet binding agreement for the instruction of a year-long course. For the most part, we view these discussions as exploratory in nature; the Navy apparently used them to determine the practicalities of conducting such a course for its students. The Navy states that it informed Mrs. Patton that future sessions would be contingent on management support for the program

and that the cost of any future orders would have to be competitive relative to other contractors. We therefore do not believe it was reasonable for Mrs. Patton to conclude that a binding agreement for a year-long course was intended. We conclude that the Navy did not enter into an oral contract with Mrs. Patton for instructional services beyond what was required in the three orders.

Even assuming that the statements made by the course coordinator indicated that a year-long course was intended, these statements would not give rise to a valid agreement. The government is not bound beyond the actual authority of its agents. DBA Systems, Inc.--Reconsideration, B-212101.2, Aug. 23, 1983, 83-2 CPD ¶ 244. Here, the course coordinator did not possess the authority necessary to bind the government to an agreement with Mrs. Patton--only a contracting officer actually possessed such authority. Federal Acquisition Regulation, § 4.101, 48 Fed. Reg. 42,102, 42,113 (1983) (to be codified at 48 C.F.R. § 4.101).

Finally, in the absence of a contract, the courts and our Office have allowed payment for the reasonable value of services on a quantum meruit basis where the government has received a benefit. Bellinger Shipyard, B-212968, Apr. 10, 1984, 84-1 CPD ¶ 403. Mrs. Patton, however, may not be paid for an additional 4-week period under this legal theory because the Navy did not benefit from her unemployment. Mrs. Patton may not be reimbursed for expenses incurred in anticipation of the continuation and expansion of the course, either, since the Navy only benefited to the extent that instruction was provided pursuant to the three purchase orders. Payment for these services has been made in full.

Mrs. Patton's claim is denied.

Milton J. Auster
for Comptroller General
of the United States