

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

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FILE: B-218957

DATE: August 1, 1985

MATTER OF: Government liability for unauthorized
emergency telephone services

DIGEST: Company that provided unauthorized services to Government on emergency basis to restore telephone service due to power outage at missile testing range may be paid on quantum meruit basis because services constituted a permissible procurement, Government received and accepted their benefit, company acted in good faith, and amount claimed represents reasonable value of benefit received.

Lieutenant Colonel (LTC) Warren L. Harris, Commander at the United States Air Force Utah Test and Training Range, requests permission to pay the Mountain States Telephone Company \$1,760.28 for services provided to the United States Air Force at the Utah Test and Training Range, Great Salt Lake, Utah. Based on our review of the facts in this situation, it is our conclusion that the telephone company is entitled to recover the amount claimed on a quantum meruit basis.

FACTS

The United States Air Force leases a rather extensive telephone system at the Utah Test and Training Range on the west side of the Great Salt Lake, Utah. The range serves as a testing ground for the development of various missile systems. The 1881st Communications Squadron at Hill Air Force Base is responsible for the management and payment of the telephone services under a lease from the Mountain States Telephone Company.

On Sunday, December 9, 1984, the main electrical transformer serving all buildings on the training range was disrupted. The telephone company in Salt Lake City was alerted by automatic signal. Backup power sources could not be brought on line. The prognosis by the weekend technician was that the problem could not be corrected until the following Tuesday. Emergency batteries were incapable of providing power until repairs could be made. Therefore, the telephone company took the initiative of installing an auxiliary generator to restore power in the interim.

The record does not disclose that any officer or employee of the Government requested, or was even aware that the

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telephone company had undertaken the actions in question. In other words, the telephone company was acting as a volunteer.

Where a valid written contract for a procurement was never executed and the agency is unable to establish even an implied agreement to pay for the goods or services provided, the agency may not ratify the procurement retroactively. However, under this Office's claims settlement authority (31 U.S.C. § 3702), the Comptroller General may authorize reimbursement to the contractor on a quantum meruit or quantum valebant basis when certain conditions are met.

We must first make a threshold determination that the goods or services would have been a permissible procurement had the formal procedures been followed. There is no reason to believe that the emergency generator services could not have been procured formally had time permitted.

Next we must find that the Government received and accepted the benefit, the persons seeking payment acted in good faith, and the amount claimed represents the reasonable value of the benefit received. B-210808, May 24, 1984; see 33 Comp. Gen. 533, 537 (1954); 40 Comp. Gen. 447, 451 (1961). In situations in which a third-party acted entirely on his own, without the knowledge or consent of a Government representative, whether conveyed formally or informally, it is difficult to establish acceptance by the Government and good faith on the part of the contractor unless the voluntary services were performed on an emergency basis involving the protection of human life or property. See 31 U.S.C. § 1342 (the "Antideficiency Act") which ordinarily prohibits the acceptance of voluntary services except on that basis.

The Air Force has concluded that the amount of the claim is reasonable and urges us to pay it. We have no reason to disagree with the view that the continued operation of telephone service at a missile test range was in the interest of public safety and thus constituted a "public necessity," as established by our decisions. 62 Comp. Gen. 414, 423-25 (1983). Therefore, we authorize payment of \$1,760.28 to the Mountain States Telephone Company for its emergency generator services on a quantum meruit basis.

for 
Comptroller General
of the United States