

DECISION

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

FILE: B-182437

DATE: July 27, 1976

01214

98900

MATTER OF: Monitor Products Company, Inc.

DIGEST:

Where unauthorized Government official induced claimant to complete another's contract by stating that claimant's justifiable excess costs could be reimbursed, payment of claimant's justifiable cost increases may be allowed on quantum valebat basis since agency now has ratified contractual relationship. Claim is returned to agency for determination of whether value of items received exceeds any compensation received by claimant and for payment of any such amount.

Monitor Products Company, Inc. has requested this Office to require the Navy to return certain oscillators for which a claim for payment was twice denied by this Office. See Monitor Products Company, Inc., B-182437, March 12, 1975, 75-1 CPD 151 and October 9, 1975, 75-2 CPD 215.

In our prior decisions we concluded that Monitor was a subcontractor under a Government prime contract with Arvin Industries. Arvin was contractually obligated to deliver 160 oscillators to the Navy at a stipulated price. During the course of the contract, the Navy considered increasing the contract quantity from 160 to 200 units. Monitor, which was actually producing the items, indicated to the Navy's project engineer that a substantial price increase would be necessary for the additional 40 units as well as reimbursement for cost overruns which it was incurring in producing the initial 160 units; otherwise it would have to cease production. The project engineer contacted a Navy supply officer who telephoned the cognizant contracting officer requesting that a novation agreement be entered into recognizing Monitor as the prime contractor. The cognizant contracting officer then contacted Arvin in an attempt to obtain a novation agreement and Arvin reported that it had requested information from Monitor that was necessary to accomplish the agreement. Arvin also stated that Monitor was acting as its subcontractor.

Apparently, the project engineer requested that Monitor commence production since he understood that a novation agreement was to be implemented with the contracting officer. He also advised Monitor that it would have to justify the additional costs and negotiate them when the novation agreement was effected.

It is not clear from the record whether or not Monitor attempted to effect a novation agreement. In any event, no novation agreement was entered into; Monitor resumed production, and the Navy accepted 160 oscillators.

In our prior decisions we denied Monitor's claim for its excess costs in producing the 160 oscillators on the basis that no agency official having contract authority ever agreed to reimburse Monitor for its work and since the Government paid its prime contractor the agreed upon price for the delivered items.

Monitor however, insists that it was induced to incur the additional costs by a representative of the Navy who appeared to have the authority to commit the Government. The Navy has reviewed the situation and at this point has added to the record the fact that the supply officer had emergency authority to obligate the Government. The Navy now requests that:

"[i]n view of the fact that the contracting officer was aware of the commitment made by [the project engineer] and did not disavow it, it is recommended that this claim be favorably received."

Although the United States cannot be bound beyond the actual authority conferred upon its agents by statute or regulation, see United States v. Crance, 341 F. 2d 161, 166 (8th Cir. 1965), the courts and our Office have recognized that in appropriate circumstances payment may be made for services rendered on a quantum meruit basis (the reasonable value of work or labor), or for goods furnished on a quantum valebat basis (the reasonable value of goods sold and delivered). 40 Comp. Gen. 447, 451 (1961). Before a right to such payment may be recognized it must be shown that the Government has received a benefit, and that the unauthorized action has been ratified by an authorized contracting official of the Government. Dictamatic Corp., B-181038, May 16, 1974, 74-1 CPD 260; B-166439, May 2, 1969.

B-182437

In our opinion, the Navy's latest correspondence constitutes a ratification of a direct agreement between Navy and Monitor in this matter. In such circumstances payment to Monitor of its justifiable cost increases on a quantum valebat basis would be permissible. Dictamatic Corporation, supra.

However the record before us shows that Monitor was advised by the project engineer that it would be required to justify additional costs during subsequent negotiations. In other words, the price to be paid Monitor was left open. Also, the record before us does not indicate the amount of payment, if any, which Monitor may have received from Arvin. Since the Navy apparently has made no determination regarding the extent of Monitor's justifiable cost increases, we are referring this matter back to the Navy with the request that it determine the value of Monitor's performance. Monitor's claim may be paid to the extent that the value of the items furnished exceeds any compensation which Monitor may have received from Arvin.

R. F. Kistner
Deputy Comptroller General
of the United States