



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Department of the Army--Payment for Repair
Services
Matter of:
File: B-228637
Date: October 16, 1987

DIGEST

Electric supply company that performed emergency repair services to restore air conditioning and hot water to an Army facility, including a hospital, may be paid on a quantum meruit basis. The services would have constituted a permissible procurement, the government received and accepted the services and the company acted in good faith.

DECISION

Westinghouse Electric Supply Company (WESCO) seeks reimbursement from the Department of the Army for \$36,799.00 for services provided in repairing a breakdown in electrical equipment used to supply power to Fort Jackson, South Carolina. The Army forwarded this claim to the General Accounting Office as a doubtful claim.^{1/} The Army recommends favorable consideration of WESCO's claim for this amount because:

"The Contracting Officer in charge at Ft. Jackson states that the services provided benefited the Government, that the claimant acted in good faith, and that the prices are considered fair and reasonable."

Based on our review of the documentation submitted, it is our conclusion that WESCO may be paid on a quantum meruit basis.

FACTS

This claim arose from emergency services performed by WESCO to repair electrical equipment on the grounds of the United States Army base, Fort Jackson, South Carolina, in June of 1985. On June 14, Westinghouse equipment in one of the central energy plants in Fort Jackson caught fire and was

^{1/} GAO Policy and Procedures Manual for Guidance of Federal Agencies, title 4, section 5.1.

040263

destroyed, causing damage and loss of power in that plant.^{2/} This, in turn, resulted in a loss of air conditioning and hot water supply to a major portion of Fort Jackson, including Moncrief Army Hospital. Because it was summer, loss of air conditioning substantially increased the temperature in the hospital. Since the hospital maintained no backup unit, this posed a serious health hazard. On June 14, the Army contacted Inman and Associates (Inman), a local electrical contractor that was already performing work under another contract at Fort Jackson. Inman informed the Army that it could not repair the burned Westinghouse equipment and that the only known vendor capable of performing this work was WESCO. Without informing the Army, Inman then contacted WESCO about repairing the equipment. Shortly thereafter, the Army took steps to initiate a formal agreement with WESCO, contacting WESCO on June 18. Over the next 3 days, an Army purchasing agent attempted and failed to reestablish contact with WESCO to determine what WESCO's price quote would be for this repair. Thereafter, the Army made no further attempt to contact WESCO in this regard. On approximately June 28, WESCO called to inform the Army that it had completed repairs on the damaged equipment and that it had established a cost of \$41,000.00 for the labor and materials involved.

In its administrative report, the Army indicates that "[i]t appears that a breakdown in communications or a misunderstanding occurred" between the Army purchasing agent and WESCO. The Army acknowledges that "damages to the . . . [equipment] could not be determined by visual inspection and a realistic repair estimate could not be given until equipment was disassembled." Therefore it appears likely that, based on its initial contact with Inman and on its June 18 call from the Army, WESCO proceeded to make repairs in good faith, assuming that it would receive compensation after having made them. Accordingly, the Army concluded that there was "no doubt that Westinghouse performed work . . . and should be compensated for their effort." Upon review, the Army concludes that WESCO's charges are reasonable, except for a portion based on a subcontracting agreement with Inman and Associates. According to the Army, this portion should not be paid because the Army has already compensated Inman for this work under a separate agreement.

^{2/} According to the Army administrative report, a Westinghouse 600 AMP panel burned, causing damage to the fuse truck and loss of electrical power to equipment in the plant. This power loss affected two condensate pumps, two chilled water pumps, the number four boiler, the number four compressor, two high temperature water pumps and two 1100 ton chiller units.

Thus, the Army recommends payment to WESCO in the reduced amount of \$36,799.00. WESCO has written to this Office stipulating that it waives any portion of its claim above this reduced amount.

DISCUSSION

As the Army's request indicates, a basis in equity exists for payment of WESCO's claim. The doctrine of quantum meruit is based on the equitable concept of unjust enrichment. Under this doctrine, the federal government may be obligated to pay the reasonable value of services that it actually receives on an implied, quasi-contractual basis. See B-221604, March 16, 1987; 62 Comp. Gen. 337 (1983).

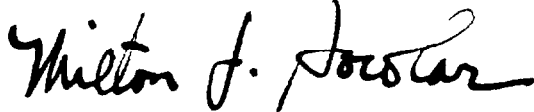
In 64 Comp. Gen. 727, 728 (1985), this Office reiterated the test for recovery under quantum meruit. First, we must make a threshold determination that the services would have been a permissible procurement had formal procedures been followed. 64 Comp. Gen. at 728. There is no question that these electrical repair services could have been procured through formal agreement. According to the record, had a breakdown in communication not occurred, a formal agreement would have been reached in this case. Had WESCO not repaired the breakdown, the Army would have been forced to procure services from another electrical contractor.

Next, we must find that the federal government received and accepted the benefit of the services provided, the persons seeking payment acted in good faith, and the amount claimed represents the reasonable value of the benefit received. 64 Comp. Gen. at 728. There is no question that the Army received a benefit. Obviously, Fort Jackson benefited from the restoration of air conditioning and hot water. In addition, Moncrief Army Hospital, having been without air conditioning in the beginning of summer, was relieved of a situation which was potentially dangerous to its patients. Based on the record, it appears that WESCO acted in good faith. It began work in an emergency situation where all parties believed that failure to repair the damaged equipment promptly would result in dangerous conditions for patients in an Army hospital. Moreover, the Army acknowledges that it had a breakdown of communications with WESCO and there is evidence to suggest that, in making repairs before determining a rate of compensation, WESCO was doing what it believed the Army intended.

The final element to be established to allow for recovery under quantum meruit is an amount which represents the reasonable value of the benefit received by the Army. The Army reviewed WESCO's original claim and, after recommending that a portion of it be denied, concluded that the reduced

claim of \$36,799.00 was "fair and reasonable." WESCO has subsequently stipulated that this amount is acceptable. We therefore accept the amount claimed as the reasonable value of the benefit that the Army received.

In view of the foregoing, we conclude that the standard for quantum meruit recovery have been met. The Army may therefore pay WESCO's claim in the amount of \$36,799.00.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States