

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

FILE: B-182437

DATE: October 9, 1975

MATTER OF: Monitor Products Company, Inc.

DIGEST:

Although claimant contends that contracting agency's project engineer induced it to complete another party's contract by promising claimant that it would be reimbursed, no basis for payment to claimant exists since project engineer's actions were unauthorized and record does not indicate that any official of agency having contracting authority agreed to reimburse claimant for work performed.

By letter of May 21, 1975, Monitor Products Company, Inc. (Monitor) has requested a reconsideration of our decision in the matter of Monitor Products Company, Inc., B-182437, March 12, 1975, in which we denied its claim for the additional costs it experienced in fulfilling a United States Navy contract which had been awarded to Arvin Industries, Inc. (Arvin). Monitor contends that our March 12 decision was " * * * improper and did not take into account the overall contractual commitment made by a representative and Project Engineer of the Navy" upon which its claim was based.

On February 15, 1973, a fixed-price Navy contract No. N00123-73-C-1575 was awarded by the Naval Regional Procurement Office, Long Beach, California to Arvin for the furnishing of crystal oscillators. Monitor Products acquired a division of Arvin in December 1973, and one of the stipulations in the acquisition was that Monitor would not be responsible for completion of the contract under consideration here. In January of 1974 the Administrative Contracting Officer communicated with Arvin with respect to the sale of part of its assets to Monitor and requested Arvin to submit certain documentation "if Arvin requests the Government to recognize Monitor Products Company as a successor in interest to subject contract [in which event] a novation agreement must be executed." By letter dated January 15, 1974, Arvin informed the Administrative Contracting Officer that the required information had been requested from Monitor. Monitor notified the Navy

by letter of January 29, 1974, that it had purchased a division of Arvin and that it wished to participate in the furnishing of future requirements for frequency control devices, but no reference was made to the subject contract.

In a letter dated March 7, 1974, Arvin advised the Administrative Contracting Officer that Monitor would be "acting in part with Arvin personnel as subcontractors to produce the items required on subject contract." The contract was fully performed and the required items were delivered and accepted. Final payment of the contract price was made to Arvin on August 23, 1974. It is reported that at no time prior to the presentation of the claim to the General Accounting Office had Monitor made a claim under the contract to the Naval Regional Procurement Office at Long Beach, California.

By letter dated October 8, 1974, Monitor submitted its claim to this Office. Enclosed with this letter was a copy of a memorandum dated May 13, 1974, from the Project Engineer to his Commanding Officer requesting that a novation agreement be entered into by the Navy Contracting Office, Arvin, and Monitor, in order to compensate Monitor for excess costs it incurred in fulfilling the contract. The memorandum stated that in response to a request by the Navy on February 1, 1974, to increase the quantity requirement under the contract, Monitor costed out the additional units and recognized that each unit it completed cost far in excess of the contracted price. Therefore, Monitor informed the project engineer that it had stopped production. The project engineer requested that Monitor commence production immediately since he felt that a novation agreement would be implemented and he was worried about the reprocurement delay which would result from a termination of the Arvin contract for default.

In response to Monitor's claim, the Navy contended that the actions of the project engineer were improper and unauthorized and that steps had been taken to prevent a recurrence of such conduct. Furthermore, the proposed novation agreement was never implemented and, therefore, there was no privity of contract between the Government and Monitor.

Our decision of March 12 concluded:

"* * * In these circumstances, it appears that Monitor completed the contract for Arvin as its subcontractor and must therefore look to Arvin for compensation for its work. In summary, as stated by the Naval Regional Procurement Office, Long Beach:

'* * * the subject contract was a fixed price contract for the delivery of a quantity of oscillators. Delivery was made under the contract and payment in full was received by the contractor at the contract price as modified/. The Government and the contractor both received what they had contracted for.'

"Accordingly, there is no basis for our Office to authorize payment of the claim and it is therefore denied."

In its request for a reconsideration, Monitor stresses three contentions.

- "(1) Monitor was not legally or morally responsible to complete the contract for Arvin.
- "(2) Through negotiations with the project engineer, Monitor agreed to complete the contract and by so doing saved the Navy considerable time and money on their contract.
- "(3) The project engineer verbally and in writing guaranteed a novation of the contract would be made to reimburse Monitor for this sum."

We agree that Monitor was not obligated to the Government to complete the contract for Arvin since no novation agreement was signed. Concerning the actions of the project engineer, it is well settled that agents of the Government must have actual authority in order to bind the United States, and individuals entering into contractual arrangements with the United States are, as a matter of public policy, charged with the responsibility of accurately ascertaining the extent of the authority of the agent to act for the Government. Federal Crop Insurance Corporation v. Merrill, 332 U. S. 380, 384 (1947); Newman v. United States, 135 F. Supp. 953, 957 (Ct. Cl. 1955).

While the project engineer may have induced Monitor to complete Arvin's contract by promising that Monitor would be reimbursed for any additional costs incurred, the record does not show that any official of the agency having contracting authority ever agreed to such an arrangement. Rather, it appears from the record that Monitor completed the contract work as Arvin's subcontractor. Therefore, we find no basis for concluding that the Government is liable to Monitor for its costs of performance, as alleged.

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Accordingly, our decision of March 12, 1975, is affirmed.

Thomas J. Morris
Acting Comptroller General
of the United States