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**DECISION**



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

**FILE:** B-210226

**DATE:** May 28, 1985

**MATTER OF:** Market Facts, Inc.

**DIGEST:**

GAO does not approve payment of a claim for extra compensation under the changes clause of a contract performed for a defunct federal agency where there is no written evidence that the alleged extra work performed was authorized, and the contracting officer of the defunct agency contends that such work was not authorized. Under the circumstances, the claimant has not met its burden of proving entitlement to payment.

The General Services Administration (GSA) has submitted two claims for expenses allegedly incurred by Market Facts, Inc. (MFI), and its subcontractor, Peat, Marwick, Mitchell & Co. (Peat), in the performance of constructive changes to contract No. PP9AC002 with the now defunct President's Commission on Pension Policy (Commission). The Commission terminated its activities on May 22, 1981, and GSA was then authorized, pursuant to an agreement entered into under the Economy Act, 31 U.S.C. § 686 (1976), for administrative support services, to pay outstanding invoices and to perform other ministerial tasks necessary for the liquidation of the Commission's assets and liabilities.

The firm, fixed-price contract in question was for a study to investigate the effect of Social Security, pension and other retirement plans on savings behavior. MFI and its subcontractor, Peat, performed phase I of the study, data collection, during the period of August 1979 through October 1980. Phase II of the study, data analysis, was performed by another contractor.

On January 7, 1981, MFI requested final payment under the contract. The contracting officer responded by letter dated January 13, 1981, stating that final payment will be

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held pending a determination of the Commission's expenses created as a result of MFI's contract deficiencies (listed therein). A meeting was held, however, between representatives of MFI and the Commission and an agreement was reached to release all funds due to MFI. MFI's January 7, 1981, invoice (\$68,870) was approved for payment on May 1, 1981.

On the same date, MFI submitted a claim to the Commission for \$40,700 based on additional work allegedly performed by Peat at the direction of the Commission. On May 19, 1981, MFI submitted its second claim (\$56,561, later reduced to \$38,832) for additional work allegedly performed by MFI at the Commission's direction. At the time that the Commission terminated, however, no action had been taken on the claims.

The contracting officer for the Commission contends that MFI's claims represent work that was not authorized to be performed. MFI contends that extra work which Peat and MFI allegedly performed was authorized, but has no written evidence of such authorization. However, on September 27, 1979, during the early part of contract performance, MFI was warned by letter from the contracting officer concerning the requirement for written contract modifications when changes occur which would affect either price or delivery and was notified that any change made without the approval of the contracting officer would cause MFI to be working "at risk." The contracting officer made it clear that he had not delegated his contracting authority. Cf. Centre Manufacturing Company, Inc., 392 F.2d 229 (Ct. Cl. 1968) (contracting officer's technical representative was delegated contractual authority).

There is a factual dispute as to whether MFI and Peat were authorized to perform the changes which MFI alleges they performed. GAO considers claims on the written record only, and the burden of proof is on the claimant to establish the liability of the United States and the claimant's right to payment. 4 C.F.R. § 31.7 (1985). Where, as here, the only evidence on an issue of fact is a claimant's statement that conflicts with that of contracting officials, the claimant has not carried its burden of proof. See Printer System Corporation, B-213978, May 22, 1984, 84-1 C.P.D. ¶ 546. MFI has not met its burden of proving that the changes which it allegedly performed were properly authorized by the contracting officer. Moreover, the record indicates that the contracting officer did not delegate his authority to issue change orders. Consequently, such work, if performed, was voluntary and MFI and Peat are not

entitled to extra compensation. See Space Services of Georgia, Inc., Armed Services Board of Appeals No. 25,655, Nov. 29, 1982, reprinted in 83-1 B.C.A. ¶ 16,189 (CCH 1983).

*for* *Milton J. Forster*  
Comptroller General  
of the United States