



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Acumenics Research and Technology, Inc.--
Quantum Meruit payments
File:
Date: B-224702.2
July 7, 1988

DIGEST

The Department of Labor may include a fee (or profit) in calculating the amount of a quantum meruit payment to Acumenics Research and Technology. To the extent profits are determined to be reasonable and constitute compensation for what the government received under the circumstances, inclusion of profits as an element of value in a quantum meruit recovery is not prohibited.

DECISION

This decision is in response to a request from the United States Department of Labor (DOL) for our opinion regarding a determination we made in Acumenics Research and Technology, B-224702, Aug. 5, 1987.

In that case we held that the DOL had no authority to make certain contract extensions for the services of Acumenics, which had lost its eligibility to participate in the 8(a) small business program. Although we determined that the affected contract extensions had no binding effect, we stated that the "contractor [Acumenics] is entitled to be paid for the services it performed on a quantum meruit basis." Id. at 10.

It is the latter holding which has created the new dispute between Acumenics and DOL; namely, whether the applicability of the doctrine of quantum meruit entitles Acumenics to be paid the fee it would have earned under the now voided contract extensions.

DOL is of the opinion that quantum meruit does not allow payment of a fee. Therefore, DOL has sought reimbursement from Acumenics of \$165,197.27 in fees accrued in the time period encompassed by the voided contract extensions.

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Accordingly, DOL has already withheld payment totaling \$74,450.04 on two of Acumenics' contract invoices and is demanding repayment from Acumenics for the balance of the allegedly unearned fees of \$90,747.23.

Acumenics, on the other hand, asserts that quantum meruit does not exclude an allowance for fees or profits, strongly objects to DOL's actions in this matter, and has advanced several legal arguments supporting its position.

After reviewing the relevant law on the subject, we conclude that under the doctrine of quantum meruit, the payment of fees or profits is not per se prohibited, and Labor may include a fee in its quantum meruit payment to Acumenics.

DISCUSSION

The term quantum meruit means "as much as he deserved," and provides for payment of the reasonable value of work or labor done. Black's Law Dictionary (5th ed. 1979).

Our Office has firmly established the proposition that if contracts are executed in contravention of statutory prohibition or in the absence of statutory authority, there is no legal obligation upon the government to make payments to contractors or others who have provided goods or services under such invalid contracts. B-212430, July 11, 1984; B-207557, July 11, 1983; See also, Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947). Nevertheless, our Office, as well as the courts, has adhered to the principle that if goods are furnished or services rendered, and accepted by the government, even though the contract under which the performance occurred is void, an obligation arises in the government to pay the contractor the reasonable value of the goods or services actually furnished and utilized. 58 Comp. Gen. 654, 655 (1979); 33 Comp. Gen. 533, 537 (1954). To hold otherwise would permit the government to be unjustly enriched.

The question is whether profits or fees are part of the proper measure of recovery in quantum meruit. Our office has previously allowed quantum meruit awards which included profit.

In 38 Comp. Gen. 38 (1958), we concluded that a contract which violated the cost-plus-a-percentage-of-cost contract prohibition was an illegal contract. Nevertheless, we allowed payments on a quantum meruit basis and specifically recommended that a fair and reasonable rate of profit be determined commensurate with the considerations of the specific case. Id. at 43.

In B-167723, September 12, 1969, we concluded that the questioned contract violated the Anti-Pinkerton law, but pointed out that quantum meruit payments might be justified for those services or supplies accepted by the government, "including such amount of profit thereon as would constitute just compensation under the circumstances." Id. at 3.1/ See also B-151632, July 9, 1963 (quantum meruit plus fee representing a 3 percent allowance for profit approved).

Additionally, review of the relevant court cases has shown that fees or profits may be awarded as a part of quantum meruit recovery.

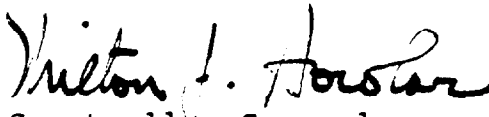
In Urban Data Systems, Inc. v. United States, 699 F.2d 1147 (Fed. Cir. 1983), an 8(a) contractor claimed monies due under its 8(a) subcontract price adjustment provisions plus a profit figure of 10 percent. The Court held that the price adjustment clauses amounted to federally proscribed cost-plus-a-percentage-of-cost contracts and were thus invalid. Id. at 1150. The Court remanded the case to the Board of Contract Appeals (Board) and ruled that the contractor was entitled to recover in quantum valebant. Id. at 1154-1155. The Court left the decision of whether to award the 10 percent profit or some other profit to the Board on remand, Id. at 1155, but it noted that no better answer to the question of fair compensation can be given "than what the parties agreed upon" (also citing 38 Comp. Gen. 38, supra).^{2/} Cf., Ferber Company v. Ondrick, 310 F.2d 462, note 4 (1st Cir. 1962) (profit and overhead may be recovered by a subcontractor under a quantum meruit theory); Central Steel Erection Co. v. Will, 304 F.2d 548 (9th Cir. 1962) (some allowance for profit is permissible and proper in quantum meruit as recovery representing an actual amount laid out by a contractor in the performance of work).

1/ Although 57 Comp. Gen. 480 (1978) overruled this decision, only our holding relating to the applicability of the Anti-Pinkerton Law, not our quantum meruit determination, was overruled.

2/ In the lawsuit, Urban claimed a net amount due of \$144,429 (a significant percentage of this set figure constituted profit). The government calculated the net amount due as \$21,846 (of which an insignificant percentage was profit). The contractor and the government subsequently settled by joint stipulation for \$78,853 plus interest. Appeal of Urban Data Systems, Inc., GSBICA No. 6966 [5545]-Rem, February 6, 1985 (Slip Opinion).

One circuit court has stated that fees or profits per se have no place in a quantum meruit recovery. Nevertheless, the court did not rule out profits as part of quantum meruit recovery and held that they may be considered to the extent that they have a bearing on the reasonable value of the contractor's services. W.F. Magann Corporation v. Diamond Manufacturing Company, Inc., 775 F.2d 1202, 1208 (4th Cir. 1985) (United States of America, Amicus Curiae).

In light of these decisions, it is apparent that, under the facts of this case, the calculation of reasonable value in a quantum meruit recovery may include consideration of a fee as one of the elements of value. To the extent that the fee is determined to be reasonable and constitutes adequate compensation for what the government received under the circumstances, we think that Labor may include a fee as an element of value in Acumenics' quantum meruit recovery.^{3/}

for 
Comptroller General
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^{3/} We note that Labor's contracting officer in the Acumenics case has already determined that the amounts claimed by Acumenics, including fees, represent a reasonable market value for the services. Moreover, according to Labor, when compared with similar fixed price contracts for litigation support services the amounts claimed by Acumenics do not appear excessive.