



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Drug Enforcement Administration--Claim for Payment--Quantum Valebant
File: B-245433
Date: December 26, 1991

DIGEST

Drug Enforcement Administration (DEA) may pay for, on a quantum valebant basis, a computer software package that it acquired without entering into a contract. However, DEA may not pay for three software packages that were developed for the agency but never accepted.

DECISION

This responds to a request from the Chief Counsel, Drug Enforcement Administration (DEA), concerning a corporation's claim of \$55,725, plus interest, for providing DEA with one computer software package and developing three others for the agency. For the reasons stated below, we conclude that DEA may pay the claimant, on a quantum valebant basis, for the software package that the agency accepted, but may not pay for the three software packages that it declined to accept. Interest is not recoverable under quantum valebant.

BACKGROUND

In June 1988, a DEA employee and the president of Computer Consultants International, Inc. (CCI) discussed the possibility of CCI developing software packages for four of DEA's crime prevention programs. Subsequently, the president of CCI met with other DEA employees and, after the discussions, proceeded to develop the software packages.

None of the DEA employees involved in the discussions were contracting officers nor did they hold themselves out to be contracting officers. Although the parties appear to have discussed the possibility of entering into a contract for the software packages, they did not do so. Regardless, CCI developed the software solely on the basis of its discussions with the various DEA employees.

On September 6, 1988, CCI delivered the first of the four software packages, the Drug Deterrence System, to DEA. The agency accepted the software and CCI installed the system and trained DEA personnel in its use. Shortly thereafter,

DEA informed CCI that no contract would be forthcoming for any of the software packages and advised the company to discontinue the development of software for the remaining three crime prevention programs.

DEA has yet to pay CCI for the installed software package and has refused to pay CCI for the work done in developing the other software packages, all three of which were available, according to CCI, prior to DEA's notice to discontinue development. CCI has requested payment for all four software packages, including interest accruing from the dates that they were available. While DEA recommends that we authorize payment to CCI for the Drug Deterrence System (\$12,360), DEA does not believe that it should pay for the three uninstalled software packages since the agency neither contracted for nor accepted them.

DISCUSSION

It is a well-established rule that the government may only enter into contracts through its duly authorized contracting officers. Federal Acquisition Regulation, 48 C.F.R. § 1.601 (1990). See B-241714, Feb. 26, 1991. Thus, as a general matter, the government is only bound by those agreements that are properly executed by contracting officers. However, pursuant to GAO's claims settlement authority, the Comptroller General may authorize payment on a quantum valebant basis for goods that the government accepted without a valid written contract. See 31 U.S.C. § 3702. Under the doctrine of quantum valebant, the government may pay the reasonable value of goods it actually received on an implied, quasi-contractual basis. B-234321, Mar. 20, 1989.

In this regard, we will authorize an agency to make payments in the absence of a contract if the following conditions are met: first, there must be a threshold determination that the goods would have been a permissible procurement had the proper procedures been followed; second, the government must have received and accepted a benefit; third, the claim for payment must be based on actions conducted in good faith; and fourth, the amount to be paid the claimant must not exceed the reasonable value of the benefit received. 69 Comp. Gen. 13, 14-15 (1989).

Here, we conclude that 1) the procurements would have been permissible had DEA followed the proper procedures, 2) CCI acted in good faith, and 3) the cost of each of the software packages is reasonable. However, since DEA only accepted one of the software packages, the Drug Deterrence System, the agency may only pay CCI, on a quantum valebant basis, for that particular software package. In developing the software without first obtaining a contract, CCI acted at

its own risk and, therefore, must bear any loss resulting from the government's decision not to purchase the three uninstalled software packages. See B-150529, Sept. 19, 1963. In addition, DEA may not pay interest on the cost of the Drug Deterrence System. Since interest is not generally recoverable against the government in the absence of an express statutory provision, it is not available in this instance. See B-242019, Aug. 5, 1991, 70 Comp. Gen. _____.

for *Timothy H. Aousar*
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