



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Interlog, Inc.; Williams, Adley & Co.

File: B-252778

Date: August 19, 1993

DIGEST

1. Claimants that provided advisory and assistance services to the government on the basis of oral instructions from a government contracting officer may be paid on a quantum meruit basis, because, in each case, obtaining the services by contract would have been a permissible procurement; the government received and accepted a benefit; the claimant acted in good faith; and the amount claimed represents the reasonable value of the benefit received.

2. Because interest is generally not recoverable against the United States in the absence of express authorization by contract or statute, claimant who recovers from the government under the equitable theory of quantum meruit is not entitled to interest.

DECISION

This action is in response to separate claims submitted to our Claims Group by Interlog, Inc., and Williams, Adley & Co. (WAC), for reimbursement of \$32,400.49 (plus interest) and \$7,743.45, respectively, for consulting support work performed for the Drug Enforcement Administration (DEA) without written contracts. We believe the claims should be paid under the equitable theory of quantum meruit.

Background

During 1990 and 1991, DEA issued several purchase orders to Interlog for advisory and assistance services to support DEA's Contracting and Procurement Unit and DEA's Office of Personnel. These services, which were performed by three Interlog employees, included technical support services to develop a DEA-wide acquisition planning system; technical support services to develop a contract/solicitation document tracking system; and technical assistance in the areas of retirement, workers compensation, and related employee benefits.

DEA issued several purchase orders to WAC for advisory and assistance services in the same time frame to support DEA's Contracting and Procurement Unit. These services, which were performed by a single WAC employee, included technical support services to implement a software system; technical review of acquisitions; development of a training program and manuals; technical analysis of a DEA procurement; and the provision of expertise and guidance to DEA contracting personnel.

The Interlog and WAC employees continued to perform services during 1991 after the end of the time period set forth in the purchase orders. It is not in dispute that the firms were orally authorized to do so by the DEA contracting officer.

DEA refused to pay Interlog and WAC for the post-purchase order services (\$32,400.49 for Interlog's services and \$7,735.45 for WAC's), essentially because the agency was concerned that the services provided may have been impermissible because they involved "inherently governmental functions," or "personal services." However, DEA advised each firm that reimbursement might be available through our Office on a quantum meruit basis.

Analysis

Under the Comptroller General's claims settlement authority, 31 U.S.C. § 3702 (1988), this Office may authorize reimbursement to a contractor under the equitable theory of quantum meruit when certain conditions are met. 64 Comp. Gen. 727 (1985). First, there must be a threshold determination that obtaining services for which payment is sought would have been a permissible procurement had the proper procedures been followed. Second, the government must have received and accepted a benefit. Third, the firm must have acted in good faith. Fourth, the amount to be paid must not exceed the reasonable value of the benefit received. Mohawk Data Science Corp., 69 Comp. Gen. 13 (1989).

The only element in issue here is the first one. DEA has acknowledged that it received and accepted a benefit from both Interlog and WAC; there is no suggestion of bad faith by the firms; and DEA advises that amounts claimed reflect reasonable hourly rates for the services performed.

An "inherently governmental function" is a function that is so intimately related to the public interest as to mandate performance by government employees, for example, an activity that requires the exercise of discretion in applying government authority or the reaching of value judgments in making government decisions, or that requires

the supervision of government employees. See OMB Policy Letter 92-1. A "personal services" contract is characterized by the employer-employee relationship it creates between the government and the contractor's personnel. Such a contract is generally prohibited because it circumvents federal civil service laws. See Federal Acquisition Regulation (FAR) § 37.104. Whether any contract violates this proscription depends on all the facts and circumstances. There are, however, general indicia of a personal services contract. One is that the nature of the service to be provided requires that it be performed by federal employees or under close government direction and control, that it, that the service involves an inherently governmental function. FAR § 37.104(d)(6).

According to the purchase orders on which the services were founded, Interlog and WAC provided "advisory and assistance services" to DEA. Federal agencies commonly procure those types of services, which typically support or improve agency policy development, decision-making, management, and administration, and which may take the form of information, advice, and opinions. See OMB Circular A-120. Neither the fact that such services necessarily include the exercise of discretion and judgment, nor the fact that the services could also be performed by a government employee,¹ in itself means that the firm is applying government authority or making government decisions, i.e., performing "inherently government functions." We see nothing in the record to establish that the ordered services were anything other than advice and assistance properly provided by contract.

DEA's submission suggests that contractor employees may have "supervised and/or reviewed" the work of government employees. The description of the duties of the contractor employees in the DEA submission, however, includes no such supervisory function, and none of the services for which the claimants seek reimbursement constituted supervision. Nor is there any basis in the DEA submission for concluding that notwithstanding the terms of the contract, the contractor in fact was hired for the purpose of supervising federal employees, rather than providing them advice and assistance.

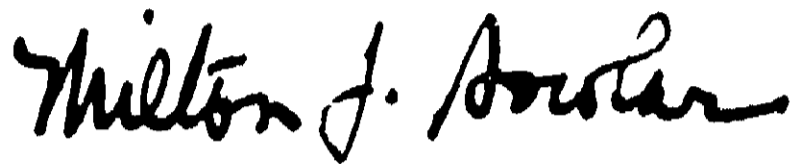
In sum, we cannot conclude on the record before us that it would not have been proper to contract for the services that

¹It appears that the Interlog employee assigned to DEA's Office of Personnel was a recent DEA retiree, who performed essentially the same duties he performed as a government employee. DEA, however, does not otherwise explain the basis for its concern that the individual's services were "inherently governmental" such that they could not also be performed by a contractor.

Interlog and WAC provided. We therefore believe that payment of their claims on a quantum meruit basis is proper.

Finally, we note that Interlog's claim is for \$32,400.49 "plus interest." Interest, however, generally is not recoverable against the United States in the absence of an express statutory provision. U.S. v. Thayer-West Point Hotel Co., 329 U.S. 585, 588 (1947). There is no statute that would allow the payment of interest in this case. See Maintenance Service & Sales Corp., 70 Comp. Gen 664 (1991).

DEA should pay Interlog's claim in the amount of \$32,400.49, and WAC's claim for \$7,743.45.



Acting Comptroller General
of the United States