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part II



DECISION

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

FILE: B-196700 DATE: January 9, 1980

MATTER OF: Eagle Valley Construction

DIGEST:

1. Where Government receives benefit of services, even though dollar amount was in excess of procurement authority and applicable procurement regulations were not followed, payment may be made on quantum meruit basis since amount claimed is reasonable and procurement has been impliedly ratified.
2. Agency failure to include applicable Davis-Bacon Act provisions to purchase order does not bar payment to contractor on quantum meruit basis and as applicable provisions were not included in purchase order contractor was not bound thereby.

→ An authorized certifying officer of the Bureau of Land Management (BLM), United States Department of Interior, has requested our decision regarding the propriety of paying an invoice submitted by Eagle Valley Construction (Eagle) for paving a wareyard at a BLM facility in Carson City, Nevada. -03580

On September 14, 1979, BLM's Carson City District Office issued a purchase order in the amount of \$9,467.50 to Eagle for paving the wareyard. Prior to issuing the order, the District Office solicited oral quotes from 3 sources of supply. Eagle had submitted the lowest quote.

The Chief, Bureau of Procurement, at BLM's Nevada Service Center, has questioned whether he may ratify the transaction. It is indicated that the District Office regard the work as "maintenance," but paving the wareyard was actually construction work. While Federal Procurement Regulations (FPR) § 1-3.6 authorizes the use of small purchase procedures where the amount involved does not exceed \$10,000, the small purchase procedures are not authorized for construction work if the price exceeds \$2,500. FPR § 1-18.3. The record also indicates that the District Office considered

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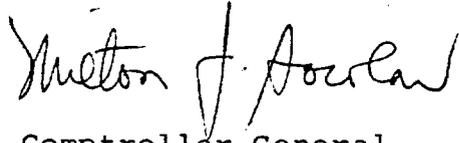
the pending expiration of its annual year funds as justification for "expedited" procedures, but there was not real urgency to pave the wayward.

The position of the Bureau of Procurement is that the procurement should have been formally advertised. Further, the Chief, Bureau of Procurement, notes that the labor standard provisions applicable to construction contracts in excess of \$2,000 were not included in the purchase order and that the wages paid were therefore not in compliance with the Davis-Bacon Act, 40 U.S.C. § 276a (1976). Finally, the amount of the purchase order was in excess of the District Office's delegated procurement authority.

Although the United States cannot be bound beyond the actual authority conferred upon its agents by statute or regulations, see United States v. Crance, 341 F. 2d 161, 166 (8th Cir. 1965), the courts and our Office have recognized that in appropriate circumstances payment may be made for services rendered on a quantum meruit basis (the reasonable value of work or labor), or for goods furnished on a quantum valebat basis (the reasonable value of goods sold and delivered). 40 Comp. Gen. 447, 451 (1961). Recognition of a right to payment on this basis, however, requires a showing (1) that the Government received a benefit and (2) that the unauthorized action has been expressly or impliedly ratified by authorized contracting officials of the Government. Defense Mapping Agency, B-183915, June 25, 1975, 75-2 CPD 15; The Singer Company, B-183878, June 20, 1975, 75-1 CPD 406.

Here the record indicates that the Government received a benefit from the performance of Eagle. The amount of the invoice is considered reasonable, and an implied ratification may be inferred from the recommendation for payment by the Chief, Branch of Procurement, at the Regional Office. DeLoss Construction Company, B-196004, November 2, 1979, 79-2 CPD _____. The failure to include Davis-Bacon Act provisions and applicable wage rates in the purchase order is not a bar to payment. As the applicable provisions were not included in the contract, the contractor was not bound thereby. D. E. Clark, B-146824, October 17, 1974, 74-2 CPD 212; 40 Comp. Gen. 565 (1961); 44 id. 498 (1965).

Accordingly, payment on a quantum meruit basis for the amount claimed may be allowed if otherwise proper and correct.

A handwritten signature in cursive script, appearing to read "Melton J. Fowler". The signature is written in dark ink and is positioned above the typed name.

For The Comptroller General
of the United States