

ms. Wulfall

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DECISION



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

[Claim for Services Rendered to Navy Without Contract]

FILE: B-199792

DATE: April 22, 1981

MATTER OF: Wheeler Industries, Inc.

DIGEST:

1. Contractor who initiates claim after effective date of Contract Disputes Act with regard to contract made before effective date of Act may elect to proceed under Act, but is not required to do so.
2. Payment may be made on a quantum meruit basis for the reasonable value of services furnished to Government without proper authorization only if shown that Government received a benefit and that procurement of the services was expressly or implicitly ratified by the authorized Government contracting official.
3. Where claimant offers no probative evidence to support assertion that Government received benefit from services performed without contract, payment on quantum meruit basis not authorized.

Wheeler Industries, Inc. [has submitted a claim for \$28,573 for services rendered to the Department of the Navy.] No formal contract was ever consummated between the parties. Wheeler, however, alleges that the contracting officer authorized performance of the services in question.] We deny the claim.

On May 18, 1977, [the Navy issued request for proposals (RFP) N00024-77-R-6199(S) on a sole source basis to Wheeler Industries.] The RFP requested a "theoretical and computational analysis of compliant tubes for use in light weight pressure compensated

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baffles * * *." [Wheeler responded with a technical proposal on May 20, 1977. The proposal contained restrictive legends, and the submittal letter noted that the proposed technical approach contained proprietary data.] The letter further advised that:

"Any resulting contract should contain provisions which reserve these proprietary interests to the proposer or otherwise establish a price for unlimited use by the U.S. Government of such data for procurement from others should the concept be put into hardware production."

According to the Navy, [negotiation ensued for several months thereafter, with continuing discussion and disagreement between the parties regarding Wheeler's attempt to restrict the Government's use of the data in question.] The proposed contract which the Navy sent to Wheeler in September 1977 did not contain the requested provisions, since no agreement as to rights in the data had been attained at that point. The contract did contain an anticipatory cost clause, which provided that:

"Allowable costs under this contract shall include all costs incurred by the contractor in connection with the work covered by this contract during the period from and including 1977 June 8 to the date of this contract, as would have been allowable pursuant to the terms of this contract if this contract had been in effect during said period."

The contract also included by reference the clause at Defense Acquisition Regulation § 7-104.9(a), Rights in Technical Data and Computer Software (1977 Apr.).

[Wheeler returned the contract to the Navy in March 1978, together with a transmittal letter, dated March 1, 1978, which stated that Wheeler's signature on the contract was made "subject to inclusion of appropriate language which recognized [its] proprietary claims with regard to the Dynamic Compliant Tube (now called Dynamic Decoupling Tube) and the Composite Compliant Tube (now called Concentric Compliant Tube)."]

[Prior to Wheeler's execution and delivery of the contract, it submitted three monthly status reports to Navy technical personnel.] These reports were dated August 1, 1977, September 1, 1977, and October 3, 1977. [These reports and Wheeler's insistence on the recognition of its proprietary rights in the data furnished were the subject of extended discussions between Wheeler and the Navy during the following months. Since the controversy was not resolved, the Government did not execute the contract.]

On July 27, 1978, [the Navy informed Wheeler that the procurement would not be funded and returned the claimant's data. Precisely 1 year later, Wheeler] responded to the Navy letter. Wheeler [advised that it could conclusively demonstrate that the contracting officer had authorized that work be commenced on June 8, 1977, and noted that the Navy had apparently made use of the information which it had submitted. The claimant requested that a contract be issued to permit payment for costs incurred plus proper fee up to the limits stated in the subject contract.] Wheeler's evidence of the contracting officer's authorization to commence work consisted only of the contracting officer's inclusion of the anticipatory cost clause in the proposed contract mentioned above.

Initially, we must determine whether this claim is correctly before us. [The Navy argues that the claimant should pursue its remedies under the Contract Disputes Act,] 41 U.S.C. § 601 et seq. (Supp. III 1979). [We do not agree.]

[Although the Contract Disputes Act covers implied as well as express contracts, the Act is not applicable as the work for which Wheeler seeks relief was completed prior to the effective date of the Act.] In this respect, section 16 of the Act, 41 U.S.C. § 601, note, provides that:

"This Act shall apply to contracts entered into one hundred twenty days after the date of enactment [Nov. 1, 1978]. Notwithstanding any provision in a contract made before the effective date of this Act, the contractor may elect to proceed under this Act with respect to any claim pending then before the contracting officer or initiated thereafter."

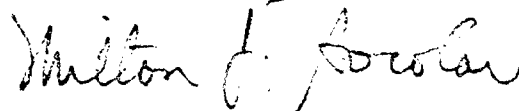
While it may be that Wheeler could have elected to proceed under the Act (on the basis that its claim was pending before the contracting officer after the Act's effective date), Wheeler, rather than doing so, chose to submit a claim to our Office. Since 31 U.S.C. § 71 authorizes this Office to settle claims against the United States, we conclude that this claim is properly before us.

In its letter addressed to our Office, Wheeler asserts that it had performed services in good faith from which the Navy derived benefit, and requests that we authorize payment in the amount of \$28,573 for the work. [We have recognized that payment may be made on a quantum meruit basis for the reasonable value of services furnished to the Government without proper authorization, but only where it can be shown both that the Government has received a benefit and that procurement of the services was expressly or implicitly ratified by the authorized contracting officials of the Government.] Defense Mapping Agency, B-183915, June 25, 1975, 75-2 CPD 15.

[The Navy and the contractor are in disagreement as to whether a benefit was conferred upon the Government.] Wheeler argues that the Navy's unqualified acceptance of its technical reports, issuance of directions to conduct certain tests, and retention of its data indicate that the Navy received a benefit. [The Navy denies that it accepted the reports without qualification, and contends that the information furnished was useless if subject to proprietary restrictions.]

[Wheeler offered no probative evidence to rebut the Navy's position and thus we must conclude that there was no benefit to the Government.] See Cyber-Synectics Group, Inc., B-198344, July 9, 1980, 80-2 CPD 22.

The claimant has not shown that its work benefitted the Government. We therefore think it unnecessary to consider the issue of ratification, since both factors must be present if payment is to be authorized. [Wheeler Industries' request for relief is denied.]



Acting Comptroller General
of the United States