



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: T. Head & Company, Inc.

File: B-238112

Date: July 30, 1990

DIGEST

The Department of Education may not pay a claim filed by a contractor who remained on the job for several months after its contract had expired. Where a contractor renders service on the mere hope that his proposal will materialize and a contract may be entered into, such services are voluntary and not reimbursable.

DECISION

An authorized certifying officer of the Department of Education (ED) asks whether ED may pay T. Head & Company, Inc. (THI), Herndon, Virginia, \$169,158.84 for services rendered to ED while THI was in a "hold-over" status after its contract expired. We conclude that ED may not pay THI's claim.

BACKGROUND

ED originally contracted with THI to organize student loan debt collection files at ED's regional offices in Atlanta, Chicago, and San Francisco for the period of September 30, 1987 through September 30, 1988. ED fully compensated THI for services performed during this period.

In March 1988, THI submitted an unsolicited proposal to ED to provide maintenance services for the debt collection files at the three regional offices. ED negotiated the terms of a new contract with THI, and indicated that it was prepared, subject to the availability of funds, to enter into a new contract for the period of October 1, 1988 through September 30, 1989. ED states that it communicated the "availability of funds" contingency to THI throughout the negotiations process.

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On September 30, 1988, ED learned that funding would not be available for the new contract. Until that point in time, ED had been negotiating its budget request with the Office of Management and Budget (OMB). OMB, according to ED officials, significantly reduced the request, requiring ED to prioritize its funding needs. Given the limited funding available, ED officials decided that ED could not afford a new contract with THI.

ED states that at that time, the contracting specialist handling the contract notified Toney Head, Jr., THI president, of the lack of funds, and advised him that THI should not begin performance under the proposal. (Indeed, one ED official asserts that he advised Mr. Head, at least on a weekly basis from October 1, 1988 until May 12, 1989, that THI had no contract with ED and that THI should vacate ED facilities.) THI contends, and ED officials reluctantly concur, that regional ED officials overlooked the fact that there was no longer a contractual relationship with THI, and continued to issue daily instructions to THI employees located in the regional offices.

THI states that it continued its work on the project with the understanding that the funds to support the effort had been requested and would be forthcoming. ED officials concede that during THI's "hold-over" period, ED continued its negotiations with OMB in an attempt to obtain additional funding; but, they point out, ED did not lead THI to believe that they might get more money. According to ED, THI indicated that it had a contact in OMB who led THI to believe that funding for the proposed contract was forthcoming, and that THI was remaining on the job to protect its investment. However, both parties agree that no written contract between ED and THI for the period of October 1, 1988 through September 30, 1989 was ever executed.

On May 12, 1989, after OMB advised ED that no funding would be forthcoming for the proposed contract, an ED official ordered THI to vacate ED premises. Until that date, ED received and accepted the benefits of THI's services, which ED characterized as "voluntary." On the date it vacated the premises, THI submitted an invoice to ED requesting payment of \$169,158.84 for services rendered during the period from October 1, 1988, until May 12, 1989. Both ED and THI agree that the government received and accepted THI services having a value of \$169,158.84.

ED has requested this Office to determine whether it may pay this claim.

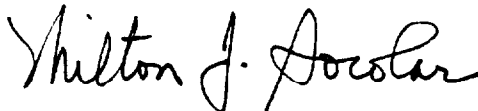
DISCUSSION

The law is well-settled that the United States may be liable on implied-in-fact contracts. See B-186431, July 22, 1976. A contract implied in fact is one founded upon a meeting of minds, which, although not embodied in an express contract, is inferred as a fact from the conduct of the parties showing, in the light of surrounding circumstances, their tacit understanding that a "contract" indeed existed. 55 Comp. Gen. 768, 777 (1976). The mere rendering of services, however, does not give rise to an implied contract; the circumstances under which the services were rendered must be such as to raise an inference of a promise to pay. B-186431, July 22, 1976.

In this regard, ED asserts that "it was communicated repeatedly back to Mr. Head . . . that if he chose for his company to remain on the job, it was at the company's own risk," and that the ED contracting specialist handling the THI contract advised Mr. Head on numerous occasions that THI should cease its activities. Mr. Head, according to ED officials, indicated he would remain on the job on a voluntary basis to protect his investment in the event funding for a new contract should become available.

We have held that where services are rendered to the government without its request, particularly where a contractor acts with only the mere hope that his proposal will materialize and a contract may be entered into, such services are voluntary and no implied-in-fact contract exists. 55 Comp. Gen. at 777; B-176498, Oct. 2, 1973. See also Wells v. United States, 463 F.2d 434, 441 (Ct. Cl. 1972). The actions of regional officials, in light of communications from ED headquarters, are not sufficient to imply a promise to pay THI.

Because the record before us provides no basis from which we might infer a promise by ED to pay THI, we cannot find a contract implied in fact. Consequently, we must advise that ED not pay THI's claim.

for 
Comptroller General
of the United States