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B-207557, Jul 11, 1983

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DIGEST: 1. CONTRACTOR WHO PROVIDED UNAUTHORIZED SERVICES BECAUSE PROPER DELIVERY ORDERS HAD NOT BEEN ISSUED, MAY BE PAID ON QUANTUM MERUIT BASIS BECAUSE SERVICES CONSTITUTED A PERMISSIBLE PROCUREMENT, GOVERNMENT RECEIVED AND ACCEPTED THEIR BENEFIT, CONTRACTOR ACTED IN GOOD FAITH, AND AMOUNT CLAIMED REPRESENTS REASONABLE VALUE OF BENEFIT RECEIVED. 2. WHERE UNAUTHORIZED SERVICES WERE RENDERED DURING FISCAL YEAR 1980 AND CONSTITUTED A BONA FIDE NEED OF THAT FISCAL YEAR, QUANTUM MERUIT PAYMENT FOR SUCH SERVICES IS PROPER CHARGE AGAINST FISCAL YEAR 1980 APPROPRIATION.

HONEYWELL INFORMATION SYSTEMS, INC.:

THE NAVY ACCOUNTING AND FINANCE CENTER (NAVY) REQUESTS AN ADVANCE DECISION ON WHETHER A CLAIM OF HONEYWELL INFORMATION SYSTEMS, INC. (HONEYWELL) FOR EQUIPMENT, SERVICES, AND SOFTWARE PROVIDED TO THE NAVY MAY BE CERTIFIED FOR PAYMENT. IF PAYMENT IS AUTHORIZED, THE NAVY ALSO REQUESTS ADVICE AS TO THE PROPER FISCAL YEAR TO CHARGE WITH THIS EXPENDITURE.

HONEYWELL CLAIMS PAYMENT ON INVOICES TOTALLING $391,556.55 FOR SERVICES PROVIDED TO THE NAVY ELECTRONIC SYSTEMS COMMAND (NAVELEX) FROM JUNE 14, 1980 TO SEPTEMBER 30, 1980. AN UNDERLYING FIXED PRICE REQUIREMENTS CONTRACT BETWEEN THE AIR FORCE (REPRESENTING THE GOVERNMENT) AND HONEYWELL CALLED FOR NAVELEX TO ISSUE VALID DELIVERY ORDERS TO COVER HONEYWELL'S SERVICES DURING THIS PERIOD. HOWEVER, DUE TO CONFUSION WITHIN NAVELEX, VALID DELIVERY ORDERS WERE NOT SIGNED UNTIL SEPTEMBER 30, THE END OF FISCAL YEAR 1980.

THE NAVY HAS CONCLUDED THAT DELIVERY ORDERS COULD NOT BE PROPERLY ISSUED AFTER THE END OF THE FISCAL YEAR, AND IN THE ABSENCE OF THE NECESSARY CONTRACT DOCUMENTS BETWEEN NAVELEX AND HONEYWELL, HAS DETERMINED THAT THE SERVICES PROVIDED BY HONEYWELL WERE UNAUTHORIZED. FOR THE REASONS DISCUSSED BELOW, WE HAVE CONCLUDED THAT HONEYWELL IS ENTITLED TO QUANTUM MERUIT RECOVERY OF $391,556.55, AND THAT THIS AMOUNT IS A PROPER CHARGE AGAINST THE NAVY'S OPERATION AND MAINTENANCE APPROPRIATION FOR FISCAL YEAR 1980.

AS BACKGROUND, THE NAVY HAS PROVIDED THE FOLLOWING INFORMATION:

"IN SUPPORT OF THE WORLD WIDE MILITARY COMMAND AND CONTROL SYSTEM (WWMCCS), A FIXED PRICE REQUIREMENT CONTRACT (NO. GS-00S-08323) PROVIDING FOR DELIVERY AND INSTALLATION OF SYSTEMS, MAINTENANCE, AND TRAINING AND TECHNICAL SUPPORT WAS EXECUTED ON 15 OCTOBER 1971, BY THE GENERAL SERVICES ADMINISTRATION (GSA) WITH HONEYWELL INFORMATION SYSTEMS, INC. THE CONTRACT TERM, WITH ALL OPTIONS, WAS EIGHT YEARS; EXPIRATION DATE 25 NOVEMBER 1979. HOWEVER, DUE TO THREE EXTENSIONS,

THE CONTRACT EXPIRATION DATE WAS ACTUALLY 13 JUNE 1980. A 'FOLLOW-ON' CONTRACT (NO. F19630-80-D-0001), THAT ESSENTIALLY PROVIDES FOR FURNISHING THE SAME EQUIPMENT, SERVICES AND SOFTWARE PREVIOUSLY SUPPLIED UNDER THE GSA CONTRACT, WAS EXECUTED ON 23 MAY 1980, BY THE DEPARTMENT OF THE AIR FORCE (ACTING PURSUANT TO A DELEGATION OF PROCUREMENT AUTHORITY FROM THE GSA). THE EFFECTIVE DATE OF THIS CONTRACT WAS 26 NOVEMBER 1979, THE DAY AFTER THE ORIGINAL EXPIRATION DATE FOR THE GSA CONTRACT. THE AIR FORCE CONTRACT INCLUDED A 'BRIDGING CLAUSE' WHICH PROVIDED FOR EXECUTION OF NEW DELIVERY ORDERS FOR EACH OUTSTANDING DELIVERY ORDER ISSUED UNDER THE GSA CONTRACT.

"AT THE TIME OF THE ORIGINAL EXPIRATION DATE OF THE GSA CONTRACT, HONEYWELL WAS DELIVERING SERVICES TO THE NAVY UNDER FOUR DELIVERY ORDERS WHICH BY THEIR TERMS ALSO EXPIRED ON 25 NOVEMBER 1979. HOWEVER, SINCE A SUCCESSOR CONTRACT WAS NOT EXECUTED, THE GSA CONTRACT WAS EXTENDED. HONEYWELL CONTINUED TO DELIVER THE SERVICES CALLED FOR UNDER THE EXPIRED DELIVERY ORDERS BECAUSE, ACCORDING TO HONEYWELL STATEMENTS, EXPRESS ASSURANCES HAD BEEN RECEIVED THAT THE DELIVERY ORDERS WOULD BE MODIFIED TO COVER THE ADDITIONAL PERFORMANCE. MODIFICATIONS WERE ISSUED WITH AN EXPIRATION DATE OF 23 MAY 1980. HONEYWELL SUBMITTED INVOICES FOR THE PERIOD 26 NOVEMBER 1979 THROUGH 23 MAY 1980 AND RECEIVED PAYMENT. THIS PATTERN WAS REPEATED FOR THE PERIOD THROUGH 13 JUNE 1980, THE SCHEDULED DATE FOR SIGNATURE OF THE 'FOLLOW-ON' CONTRACT."

ON OCTOBER 1, 1979, WWMCCS FUNCTIONS WITHIN THE NAVY WERE TRANSFERRED FROM THE NAVY REGIONAL DATA AUTOMATION CENTER (NARDAC) TO NAVELEX, ALTHOUGH NARDAC WAS RESPONSIBLE FOR ISSUING DELIVERY ORDERS UNTIL THE GSA CONTRACT EXPIRED. IT WAS INTENDED THAT AFTER JUNE 13, 1980, NAVELEX WOULD ISSUE NEW DELIVERY ORDERS AS REQUIRED BY THE AIR FORCE CONTRACT. HOWEVER, DUE TO CONFUSION CAUSED BY THE TRANSFER FROM NARDAC TO NAVELEX AND TO OTHER FACTORS, VALID DELIVERY ORDERS WERE NOT ISSUED FOR THE SERVICES HONEYWELL PROVIDED FROM JUNE 14 TO SEPTEMBER 30, 1980.

ACCORDING TO HONEYWELL, DURING EACH OF THE EXTENSION PERIODS UNDER THE GSA CONTRACT (NOVEMBER 26, 1979 TO MAY 23, 1980 AND MAY 24, 1980 TO JUNE 13, 1980) REQUIRED SERVICES HAD BEEN PROVIDED WITHOUT INTERRUPTION AT THE REQUEST OF NAVY OFFICIALS, DESPITE THE FACT THAT NO CURRENT DELIVERY ORDERS HAD BEEN ISSUED. IN BOTH CASES, RENEWAL ORDERS WERE EVENTUALLY ISSUED AND HONEYWELL'S INVOICES WERE PAID. THE RECORD INDICATES THAT DURING THE PERIOD FROM JUNE 14 TO SEPTEMBER 30, 1980, NAVY PERSONNEL AGAIN REQUESTED THAT SERVICES BE CONTINUED, ASSURING HONEYWELL THAT VALID DELIVERY ORDERS WOULD BE ISSUED TO COVER SUCH PERFORMANCE. HONEYWELL STATES THAT PERFORMANCE WAS CONTINUED IN RESPONSE TO THESE REQUESTS AND ASSURANCES, AND BECAUSE OF HONEYWELL'S KNOWLEDGE THAT "THE SERVICES BEING PROVIDED WERE ESSENTIAL TO MAINTAIN THE NAVY WWMCCS IN OPERATIONAL CONDITION."

HONEYWELL HAS SUBMITTED INVOICES FOR $391,556.55 WHICH THE NAVY HAS DECLINED TO PAY PENDING A DETERMINATION OF AUTHORITY BY THIS OFFICE. THE NAVY CITES 31 U.S.C. SEC. 1501(A)(1) (FORMERLY 31 U.S.C. SEC. 200(A)(1)) WHICH PROVIDES THAT BEFORE AN AMOUNT CAN BE RECORDED AS AN OBLIGATION OF THE GOVERNMENT IT MUST BE SUPPORTED BY DOCUMENTARY EVIDENCE OF A BINDING AGREEMENT BETWEEN THE PARTIES EXECUTED BEFORE THE END OF THE PERIOD OF AVAILABILITY FOR OBLIGATION OF THE APPROPRIATION CONCERNED. BECAUSE RENEWAL ORDERS WERE NOT ISSUED PRIOR TO SEPTEMBER 30, 1980, THE END OF THE FISCAL YEAR, THE NECESSARY CONTRACT DOCUMENTATION DOES NOT EXIST BETWEEN THE NAVY AND HONEYWELL FOR THE PERIOD FROM JUNE 14 TO SEPTEMBER 30.

THE UNDERLYING CONTRACT BETWEEN THE AIR FORCE AND HONEYWELL WAS IN EFFECT DURING

THIS PERIOD AND WAS A "BINDING AGREEMENT," BUT IT WAS A REQUIREMENTS CONTRACT. TO TRIGGER A COMMITMENT OF FUNDS BY NAVELEX FOR THE PROCUREMENT OF THE SERVICES, VALID DELIVERY ORDERS WOULD BE NECESSARY. SINCE NO SUCH ORDERS WERE EXECUTED, THE NAVY VIEWS THE SERVICES HONEYWELL PROVIDED DURING THE PERIOD IN QUESTION TO HAVE BEEN UNAUTHORIZED. (THE NAVY NOTES THAT THE DEFENSE ACQUISITION REGULATION CONTAINS NO PROVISION SIMILAR TO 41 C.F.R. SEC. 1-1.405 WHICH ALLOWS ADMINISTRATIVE RATIFICATION OF UNAUTHORIZED PROCUREMENTS IN CERTAIN CIRCUMSTANCES.)

THERE IS A WELL-ESTABLISHED RULE THAT THE GOVERNMENT IS NOT BOUND BY THE UNAUTHORIZED ACTS OF ITS EMPLOYEES. (FEDERAL CROP INSURANCE CORP. V. MERRILL, 332 U.S. 380 (1947).) WHERE A VALID WRITTEN CONTRACT WAS NEVER EXECUTED AND THE AGENCY IS UNABLE TO RATIFY THE INFORMAL AGREEMENT RETROACTIVELY, THE GOVERNMENT HAS NO LEGAL OBLIGATION TO PAY CONTRACTORS WHO HAVE PROVIDED GOODS AND SERVICES. HOWEVER, UNDER GAO'S CLAIMS SETTLEMENT AUTHORITY (31 U.S.C. SEC. 3702), THE COMPTROLLER GENERAL MAY AUTHORIZE PAYMENT ON A QUANTUM MERUIT BASIS.

WHERE A PERFORMANCE BY ONE PARTY HAS BENEFITED ANOTHER, EVEN IN THE ABSENCE OF AN ENFORCEABLE CONTRACT BETWEEN THEM, EQUITY REQUIRES THAT THE PARTY RECEIVING THE BENEFIT SHOULD NOT GAIN A WINDFALL AT THE EXPENSE OF THE PERFORMING PARTY. THE LAW THUS IMPLIES A PROMISE TO PAY BY THE RECEIVING PARTY WHATEVER THE SERVICES ARE REASONABLY WORTH. SEE, E.G., BOUTERIE V. CARRE, 6 SO.2D 218, 220 (LA.APP. 1942); KINTZ V. READ, 626 P.2D 52, 55 (WASH.APP. 1981). BEFORE GAO WILL AUTHORIZE A QUANTUM MERUIT OR QUANTUM VALEBAT PAYMENT, WE MUST MAKE A THRESHOLD DETERMINATION THAT THE GOODS OR SERVICES WOULD HAVE BEEN A PERMISSIBLE PROCUREMENT, HAD THE FORMAL PROCEDURES BEEN FOLLOWED. NEXT WE MUST FIND THAT (1) THE GOVERNMENT RECEIVED AND ACCEPTED A BENEFIT, (2) THE CONTRACTOR ACTED IN GOOD FAITH, AND (3) THE AMOUNT CLAIMED REPRESENTS THE REASONABLE VALUE OF THE BENEFIT RECEIVED. SEE 33 COMP.GEN. 533, 537 (1954), AND 40 COMP.GEN. 447, 451 (1961).

IN THE INSTANT CASE, IT IS CLEAR, IN VIEW OF THE EARLIER FORMAL GSA AND AIR FORCE CONTRACTS, THAT THE TYPES OF GOODS AND SERVICES HONEYWELL PROVIDED WERE NOT PROHIBITED BY STATUTE OR OTHERWISE IMPERMISSIBLE. THE NAVY HAS DETERMINED THAT A BENEFIT WAS RECEIVED AND ACCEPTED BY THE GOVERNMENT AS A RESULT OF HONEYWELL'S SERVICES, THAT IN DELIVERING THE SERVICES HONEYWELL ACTED IN GOOD FAITH, AND THAT THE AMOUNT CLAIMED (THE CONTRACT PRICE) IS THE REASONABLE VALUE OF THE SERVICES RECEIVED.

BASED ON OUR REVIEW OF THE RECORD, WE CONCUR IN THE NAVY'S FINDINGS. ACCORDINGLY, PAYMENT OF $391,556.55 TO HONEYWELL IS AUTHORIZED ON A QUANTUM MERUIT BASIS. THE SERVICES HONEYWELL PROVIDED WERE A BONA FIDE NEED OF THE FISCAL YEAR IN WHICH THEY WERE RENDERED. THEREFORE, THIS EXPENDITURE IS A PROPER CHARGE AGAINST THE NAVY'S OPERATION AND MAINTENANCE APPROPRIATION FOR FISCAL YEAR 1980. CF. B-208730, JANUARY 6, 1983.