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Latin American Management Association

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APPROPRIATIONS/FINANCIAL MANAGEMENT Claims Against Government Unauthorized contracts Quantum meruit/valebant doctrine PROCUREMENT Payment/Discharge Unauthorized contracts Quantum meruit/valebant doctrine Firm that provided services to the Air Force in the absence of a written amendment extending the grant that had funded the services for the previous 4 years may be paid on a quantum meruit basis where the services in fact conferred a benefit directly on the agency, notwithstanding that they previously had been provided through a grant arrangement, and all other elements to support quantum meruit relief are present.

DECISION The Latin American Management Association (LAMA) has filed a claim for $91,780, plus interest and attorneys' fees, for work performed between August 1, 1990, and December 12, 1990, in connection with an Air Force contract. LAMA had been providing the services as a grantee for 4 years, and continued to provide them for the period in question even though the grant had not been renewed. We allow LAMA's claim in the amount of $81,865.21.

LAMA's services were to assist McDonnell Douglas in meeting small and disadvantaged business (SDB) subcontracting goals in McDonnell Douglas's contract to provide the C-17 Airlifter aircraft. These goals had been imposed in furtherance of the Department of Defense's (DOD) efforts to meet its statutory goal of 5% SDB participation in DOD contracts. The Air Force funded LAMA's services on a yearly basis beginning in mid-1986, pursuant to an inter-agency agreement with the Department of Commerce's Minority Business Development Agency (MBDA), which administered the grant. MBDA issued LAMA a 1-year Financial Assistance Award effective July 1, 1986, and each year after that the government secured the continuation of services by issuing LAMA an amendment to the original Award.

In July 1990, the Air Force agreed to provide $250,000 to MBDA for LAMA to continue assisting McDonnell Douglas for the 12-month period beginning August 1, and then transferred the funds to MBDA for obligation through a new amendment. However, because of concerns at MBDA about its participation in the project--we understand that MBDA was concerned that it was using its own funds to administer a project that was directly benefitting the Air Force--no amendment was ever issued. LAMA nevertheless continued to provide services until December 12, 1990, when it was advised by MBDA that no funds were available for the extension (because the Air Force's $250,000 had expired for obligation at the end of the 1990 fiscal year).

LAMA contends that during the summer and early fall of 1990, it was repeatedly assured by MBDA officials[1] that the amendment and funding would be forthcoming shortly, and to continue performance. Both the Air Force and MBDA advise that LAMA's work conferred a substantial benefit on the Air Force, and they maintain that the firm should be paid for its efforts. MBDA, however, notes that Air Force funds should be used since the Air Force received the benefit; the Air Force agrees, but points out that the funds it had designated for the project have expired.

Although a grantee that continues work after the grant expires generally is not entitled to any further funding, we agree that LAMA should be paid, by the Air Force on a quantum meruit basis, in these circumstances.

The fact that a firm does not have a written agreement with the government to provide services and to be paid for them does not necessarily mean that if the firm provides the services it will not be paid. If the government would receive a windfall should the services not be reimbursed, our Office will authorize payment under the equitable theory of quantum meruit, under which the law implies a promise to pay whatever the services are reasonably worth. See McGraw-Hill Information Systems Co., B-210808, May 24, 1984. Before doing so, 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 company acted in good faith, and (3) the amount claimed represents the reasonable value of the benefit received.

The principle of quantum meruit thus implies a contract to pay for a benefit received. Whereas the purpose of a "contract" is to provide a direct benefit to the government, 31 U.S.C Sec. 6303, the purpose of a "grant" is to transfer something of value to the recipient to carry out a public purpose of support or stimulation authorized by law. 31 U.S.C. Sec. 6304. Thus, a measurable tangible, direct, benefit, as traditionally understood in the quantum meruit context, generally is not considered to accrue to the government by a grantee's efforts. 51 Comp.Gen. 162 (1971). As a general matter, then, when a grantee continues working even though the grant has expired, it is not entitled to any additional money from the government.

In our view, however, the relationship between LAMA and the government from August 1 through December 12, 1990 (and for the preceding period as well) supports a finding that the firm conferred a direct benefit on the Air Force, even though the services had been funded though the grant mechanism.

Public Law 99-661, the fiscal year 1987 National Defense Authorization Act, established for DOD a 5 percent goal for contract awards to SDBs. In furtherance of that mandate, the Air Force included a requirement in the McDonnell Douglas prime contract that the firm subcontract with SDB's to the greatest extent possible. See Federal Acquisition Regulation Sec. 52.219-9. LAMA's job was to furnish strategic marketing efforts that would lead to increased SDB contracting under the C-17 project. For example, LAMA was to identify the areas of greatest potential for SDB subcontracting and highly competent potential subcontractors; secure their involvement in the program; and, overall, to strive to reach 5 percent SDB subcontracting over the C-17's production life cycle.

Both the Air Force and MBDA view LAMA's efforts as directly benefitting not just McDonnell Douglas in meeting the prime contract's subcontracting goal, but the

Air Force in fulfilling DOD's statutory mandate for SDB participation. We see no reason to question that view in these circumstances. In fact, as indicated above, MBDA ended the inter-agency agreement in 1990 because it determined that it should not be involved in administering an arrangement that benefitted the Air Force directly. Moreover, we understand that since February 1991, the Air Force has actually been funding LAMA's efforts through a contract with the firm. We think that clearly confirms that the services LAMA provided for the period in issue essentially were contractual in nature, and of direct benefit to the Air Force.

As to the other elements of quantum meruit, we have no reason to believe that LAMA's services cannot properly be procured, or that the firm acted in bad faith. We note, however, there is a dispute over the reasonable value of the services provided. LAMA claims $91,780, which represents a pro rata portion (August 1, 1990, to December 12, 1990) of the $250,000 yearly project amount, plus interest and attorneys' fees. MBDA argues that the proper total payable (by the Air Force) is the amount invoiced by LAMA during that period, $81,865.21.

We agree with MBDA. First, LAMA is entitled to be paid based only on the work it actually performed, not based on the money the government had available for the work. The record shows that the government had been funding LAMA's services based on invoices submitted, and we see no reason why that basis should be changed for the period in issue.

Second, we are aware of no basis to pay LAMA interest on the claim. It is well-established that interest is not recoverable against the United States unless it is expressly authorized by statute or agreement. 65 Comp. Gen. 598 (1986). Neither is involved here.

Finally, attorneys' fees are not payable since our settlement of a claim is not an "adversary adjudication" under the Equal Access to Justice Act, 5 U.S.C. Sec. 504, which permits the payment of attorneys' fees in certain circumstances. 68 Comp.Gen. 269 (1989); Ex-Cell Fiber Supply, Inc., 62 Comp.Gen. 86 (1982), 82-2 CPD Para. 529.

In sum, we authorize payment by the Air Force to LAMA in the amount of $81,865.21. As a bona fide need of the period in which the services were rendered, the payment should be charged against Air Force funds that were available for obligation at that time. See McGraw-Hill Information Systems Co., supra.

1. The record does not suggest that the Air Force, which already had transferred the funding, had any reason to believe an amendment would not timely be issued.