

KEYWORD: *quantum meruit; quantum valebant*

DIGEST: *Quantum meruit/quantum valebant* relief is not available to a claimant who performs personal services for the government, absent statutory authority permitting the procurement of the personal service.

CASENO: 01121301

DATE: 05/08/2002

May 8, 2002

In Re:

Redacted

Claimant

Claims Case No. 01121301

CLAIMS APPEALS BOARD DECISION

DIGEST

Quantum meruit/quantum valebant relief is not available to a claimant who performs personal services for the government, absent statutory authority permitting the procurement of the personal service.

DECISION

This is in response to an appeal of the Defense Office of Hearings and Appeals (DOHA) Settlement Certificate, DOHA Claim No. 00102018, dated January 3, 2001, in which we denied the claimant's demand for payment based upon *quantum meruit/quantum valebant*.

Background

The record shows that by letter dated September 15, 1999, the claimant contacted the Director of Information Management (DIM) for the Rhode Island Army National Guard (RIANG) regarding implementation of distance learning technology in Rhode Island. The letter included a copy of a proposed contract. The contract terms set out that the claimant would provide training services for 40 days during a period beginning in September 1999, through January 2000, at a rate of \$500.00 per day. It also included a provision that provided for the reimbursement for all "actual, authorized, out-of-pocket expenditures incurred in connection with this project, including airfare." Copies of the contract submitted by the claimant did not contain any signatures nor did it show it was approved by any government official.

However, a Request, Authorization, Agreement, Certificate of Training, and Reimbursement (DD Form 1556), dated September 17, 1999, was submitted with the understanding that it would allow the claimant to receive \$16,900.00 for training services that she was to provide. From September 21, 1999, through January 28, 2000, the claimant, acting as an independent contractor, offered distance learning training classes to RIANG staff.⁽¹⁾ The record shows that the claimant submitted five invoices during this period, for a total of \$16,750.00 in training services provided. On November 18, 1999, the training set out on the DD Form 1556 was completed, and the claimant received \$16,750.00 as payment for the training services provided.

As part of her duties to provide training during this time period, claimant traveled with DIM and other RIANG personnel to Washington, D.C. on October 16, 1999, through October 19, 1999. She claims that pursuant to the unsigned agreement she submitted to RIANG in September 1999, her expenses on this trip were to have been paid by RIANG. Claimant believes she is due \$249.00 for airline tickets, baggage tips, airport shuttle and meals.

At the conclusion of the tasks set out in the September 17, 1999, DD Form 1556, for which the claimant received payment, the DIM entered into a verbal agreement with the claimant to continue offering her services to RIANG at the rate of \$500.00 per day. From November 22, 1999, through February 27, 2000, the claimant performed 37 days of service for RIANG. During this time period, her tasks included developing a communication process for dissemination of DTTP information, developing a website for distance learning, and developing a task force of RIANG personnel to initiate distance learning pilots. Her daily tasks, as evidenced by her invoices, included setting up video/audio teleconferencing, testing and troubleshooting equipment, developing a marketing plan, creating a newsletter, etc. The claimant submitted invoices for these services, but did not receive payment.⁽²⁾ She claims that she is due \$21,000.00 for the services performed during this time period.

From December 6, 1999, through December 8, 1999, claimant attended a conference on distance learning in Tennessee, where she acted as a speaker on a technology panel discussion for the Department of Defense. She is claiming reimbursement for \$638.00 in airfare, conference fees, lodging, parking, tips, bus, and meals.

Further, claimant requisitioned students at Bryant College to design a website for the RIANG distance learning program. She is requesting to be reimbursed \$300.00 for her expenditure on behalf of RIANG for the website design.

From February 29, 2000, through March 3, 2000, claimant attended the Telecon East Conference in Washington, D.C., with DIM and other RIANG personnel. She submitted a claim for \$316.00 in expenses for her airfare, parking tips, bus shuttle, meals, and a book for RIANG; however, she has never been reimbursed for this trip and claims the right to full reimbursement for her expenditures.

A second DD Form 1556 for the period March 7, 2000, through April 7, 2000, was submitted by RIANG to allow for a payment of \$7,000 to the claimant for her services as a distance learning instructor. In this capacity, she trained facilitators for the "Personnel SGT" course, trained facilitators for a unit clerk course, and trained facilitators on instruction of readiness and mobilization courses. The claimant received a \$7,000 check for her services. Claimant credited this payment to invoice numbers thirteen and fourteen which she had submitted to RIANG for thirteen days of consulting performed from February 28, 2000, to March 31, 2000.

Additionally, on March, 21, 2000, the DIM signed a consulting contract with the claimant for the period of March 2000 through July 2000. In exchange for training clients on distance learning usages for RIANG and training clients on distant learning usage for external clients, the claimant was to receive \$500.00 per day. Under this agreement, the claimant performed services, such as training on distributed training technology project equipment, research on Arkansas' distance learning program, and preparing for meetings for RIANG on April 4 through April 5, 2000, and April 11 through April 12, 2000. On or about April 12, 2000, the contract was terminated by DIM. The claimant received no compensation for the services she performed during this period. She believes she is due an additional \$2,000 for the services she performed for April 4, April 5, April 11, and April 12.

On April 12, 2000, the claimant wrote to the Adjutant General, Rhode Island. In her letter, she noted that she had not received payment in full for services she had rendered since November 18, 1999. She asserted that she was due \$25,069.25 for services rendered, reimbursement for travel, and interest on invoices not yet paid. She also noted that RIANG was not following the reimbursement schedule that had been attached to the March 21, 2000, contract with the DIM. On April 26, 2000, the Rhode Island National Guard Bureau requested more information regarding the payments of the amounts which the claimant was demanding. On May 18, 2000, claimant responded via letter. In her letter, she explained her situation and the details surrounding the services she had rendered. On June 6, 2000, the Rhode Island National Guard Bureau, Procurement Division, answered the claimant's request for payment. In the letter, the Procurement Division explained that the services the claimant rendered were provided without obtaining the proper contractual authority. The National Guard Bureau then requested additional information. On August 29, 2000, the claimant was notified via certified mail that her request for payment in the amount of \$25,069.25 was denied because the services provided by the claimant were the result of personal services contract entered into with a Government employee who lacked the authority to bind the Government by contract. [\(3\)](#)

The claimant appealed this decision based upon *quantum metuit/quantum valebant*. In Settlement Certificate No. 00102018 dated January 3, 2001, we denied relief under *quantum meruit/quantum valebant* because the claimant's services were of a personal service nature and therefore, not a permissible procurement. The claimant now appeals the determination in the Settlement Certificate, arguing that our analysis of *quantum meruit/quantum valebant* was in error.

Discussion

The terms *quantum meruit/quantum valebant* stand for "as much as he deserves" and "as much as they are worth," respectively. See Blacks Law Dictionary, 1119 (5th Ed. 1979). The concept evolved from common law for the purpose of allowing restitution for contracts implied in law or fact. The criteria for payment under *quantum meruit/quantum valebant* principles normally include four elements. First, there must be a threshold determination that the goods or services at issue would have been a permissible procurement had the proper procedures been followed. Second, the U.S. Government must have received and adopted a benefit. Third, the entity seeking payment must have acted in good faith. Fourth, the amount to be paid must not exceed the reasonable value of the benefit received. See Comptroller General

Decision B-249075, September 16, 1992; *see also* 69 Comp. Gen. 13 (1989).

Therefore, in order for the claimant to receive any payment for her services under *quantum meruit/quantum valebant*, the services provided must first be adjudged to have been a permissible procurement. According to Federal Acquisition Regulations (FAR) § 37.104(b) personal service contracts are not permissible procurement unless specifically authorized by statute. (4) Due to the nature of personal service work, the government is normally required to obtain employees by direct hire under competitive appointment or other procedures required by the civil service laws to perform personal services. Therefore, obtaining personal services by contract, rather than by direct hire is only permissible when authorized by Congress. *Id.*

A personal service contract is characterized by the employer-employee relationship between the Government and a contractor's personnel. *See* FAR § 37.104 (a). Each contract arrangement is judged in the light of its own facts and circumstances, with a focus on the amount of continuous supervision and control that the government has over the contractor. In order to distinguish personal service contracts from other types of service contracts, the FAR lists six criteria as a guide to assessing whether or not a contract is personal in nature. These criteria include: performance of duties on site; principal tools and equipment are furnished by the Government; services are applied directly to the integral effort of agencies or an organizational subpart in furtherance of assigned function or mission; comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel; the need for the type of services provided can reasonably be expected to last beyond one year; the inherent nature of the service, or the manner in which it is provided, reasonably requires directly or indirectly, Government direction or supervision of contractor employees in order to adequately protect the Government's interest.

In the instant case, we believe that when weighing the facts in light of the guiding elements, the claimant was clearly performing personal services for RIANG. First, the claimant, via her attorney, admits that a portion of the claimant's work was performed on-site at RIANG and other military installations. While she submits that she also performed a large portion of the work off-site, her invoices seem to indicate that the majority of the work was done on-site. Second, the physical tools and hardware for the project were provided by the government. While the claimant may be a resource, the claimant herself is not a tool or piece of equipment, as her attorney tries to argue. Third, the services provided, namely assisting with the implementation of a distance learning course, directly furthers the mission critical goal, the goal of military preparedness. Fourth, at least some of the services provided by the claimant were available from RIANG personnel. In general, RIANG personnel had the necessary skills to many of the clerical/administrative functions that the claimant performed. For instance, RIANG has staff whose job descriptions include web page design, and the development of a newsletter. Fifth, it is difficult to say that the services the claimant was providing under the verbal contract would not be expected to last beyond one year. Indeed, the need for the claimant's services to continue was even anticipated by the claimant herself when she drafted the contract that included a provision that provided for the potential creation of an employer/employee relationship between the parties after the expiration of the initial term of the proposed contract. Finally, the sixth criterion leads us to an examination of the level of direct supervision the claimant was under while performing her tasks. It appears from the invoices submitted that the claimant's tasks were directed by a supervisor. She appears to have pursued a wide variety of tasks at any given time; *e.g.* set up video/audio teleconferencing equipment; test and troubleshoot equipment; set up meetings; create a newsletter; develop a marketing plan, etc. Clearly, the claimant would have had to work closely with RIANG staff to fulfill these duties. Therefore, the totality of the circumstances lead to the conclusion that the claimant was clearly performing personal services and hence, her services were not a permissible procurement.

While in this instance the parties agree that the Government did receive a benefit and the claimant acted in good faith, a determination of the reasonable value for the services received has not been conducted because the claimant's situation

fails to meet the first criterion of the test. The claimant's *quantum meruit/quantum valebant* claim must be denied because personal services are not permissible procurements, absent a specific statutory authority.

Conclusion

While we have significant reservations regarding the acquisition procedure used in this case, we affirm the Settlement Certificate.

/s/ _____

Michael D. Hipple

Chairman, Claims Appeals Board

/s/ _____

Jean E. Smallin

Member, Claims Appeals Board

/s/ _____

Jennifer I. Campbell

Member, Claims Appeals Board

1. According to the DD Form 1556 dated September 17, 1999, the claimant offered courses on the development of client's needs assessments - 4 students; train instructors on effective distance learning classes- 6 students; training clients on equipment operation - 6 students; training on applications of technology to best suit business objectives - 6 students; training on new advances in technology that will affect bottom line - 4 students; and training on evaluation strategies for distance learning sessions - 6 students.

2. Invoices numbers one through five were paid under DD Form 1556 dated September 17, 1999. Invoice number six was for the period from November 22 through December 5, 1999, and included six days of work. Invoice number seven was for the period from December 5 through December 19, 1999, and included seven days of work. Invoice number eight was for the period from December 20 through December 31, 1999, and included 6 days of work. Invoice number nine was for the period from January 1 through January 15, 2000, and included 6 days of work. Invoice number ten was for the period from January 16 through January 30, 2000 and included 6 days of work. Invoice number eleven was for the period from January 31 through February 13, 2000, and included 6 days of work. Invoice number twelve was for the period from February 14 through February 27, 2000, and included 6 days of work.

3. This amount includes the claimant's request for payment for the services performed, travel reimbursement, expenses for the web site and interest. It should be noted that the statute the claim is made under must specifically provide for the payment of interest, in order for interest to be paid. In this case, there are no provisions for the payment of interest. *See* DOHA Claims No. 98090309 (November 17, 1998).

4. Payment for the claimant's training services provided as described on the two DD Form 1556s were permissible procurements to the extent that the claimant provided training classes. In order for services to be reimbursed under a DD Form 1556, training must be an instructional service that is available to the general public and priced the same for everyone in the same category, *i.e.* price per student, course, program, service, or training space. *See* DOD 7000.14-R, Vol 10, Ch. 12, ¶ 120212-B, February 1, 1996. The services performed outside the realm of classroom instruction can not be procured via DD Form 1556.