

DATE: August 21, 2015

In Re:)
) Ri3 Consultants, LLC) Claims Case No. 2013-CL-052301.3
))
Claimant)

**CLAIMS APPEALS BOARD
RECONSIDERATION DECISION**

DIGEST

Claimant may not be paid for its services because no agency official having contract authority ever agreed to reimburse claimant for its work.

Claimant may not be paid on a *quantum meruit* basis for services performed for the government without a valid contract since the services were lawfully procured by the government under a valid contract with the government's prime contractor. Since the government paid its prime contractor the agreed upon price for its performance under a valid contract, claimant may not be paid on a *quantum meruit* basis for the same services performed by the prime contractor for the same period of performance. Under the circumstances, the government was not unjustly enriched by the claimant's services.

Even if claimant were able to recover from the government under the equitable theory of *quantum meruit*, claimant is not entitled to interest because interest is not recoverable in the absence of express authorization by contract or statute.

DECISION

Ri3 Consultants, LLC, requests reconsideration of the June 18, 2015, appeal decision of the Defense Office of Hearings and Appeals (DOHA) in DOHA Claim No. 2013-CL-052301.2. In that decision, DOHA disallowed Ri3's claim for \$35,328.89 plus interest for physical security site surveys at 15 United States Army Reserve (USAR) locations.

Background

In the appeal decision, the DOHA adjudicator found evidence that Ri3 Consultants provided physical security site surveys to the USAR, 99th Regional Readiness Command (99 RRC), Pittsburgh, Pennsylvania, from approximately 2006 to 2009. Ri3 was paid for those surveys with a government purchase card (GPC). In 2009 RRC was reorganized and relocated as the 99th Regional Support Command (RSC), Fort Dix, New Jersey.

By a contract with the government dated June 11, 2009, Chenega Global Service, LLC, was contractually obligated to provide technical support necessary to assist the USAR, 99 RRC/RSC to perform its physical security mission. Specifically, Chenega was to conduct physical security inspections and to draft and submit physical security inspection reports. There was no provision in the contract authorizing Chenega to issue contracts on behalf of the government. Pursuant to the government, a named government employee was identified as the official contracting officer's representative without power of re-delegation.

The adjudicator also found evidence that Ri3 was a subcontractor under a government prime contract with Chenega Global Services, LLC. In this regard, the adjudicator found that Ri3 performed the site surveys at the apparent request of a Chenega employee. There was no evidence of a contract work order or similar document issued by the government to Ri3 for the surveys at issue.

In its request for reconsideration, Ri3 states that it was not a subcontractor or agent of Chenega. Ri3 states that it had no knowledge about the government's contract with Chenega. Ri3 contends that all its purchase orders were issued by a government representative of 99 RRC. Ri3 states that the appeal decision does not address Ri3's theory of recovery under *quantum meruit*. Ri3 maintains that recovery is proper under *quantum meruit* because of historical precedent, past performance and payment and Ri3's good faith basis for believing in its continuing relationship with the government.

Discussion

Our authority to grant relief in contractual disputes is limited to the relief, if any, available through the general claims statute, 31 U.S.C. § 3702. In this case, the only remedy available for our consideration is whether we may authorize reimbursement to the claimant under the equitable theories of *quantum meruit* or *quantum valebant*. Generally, recovery may be implied in law under this quasi-contractual relief when the government would be unjustly enriched if it were allowed to keep goods or services without paying for them. *See* DOHA Claims Case No. 02092001 (January 30, 2003); and B-184827, Dec. 9, 1975.

In order to recover for services rendered in the absence of a valid contract under the equitable principle of *quantum meruit*, a claimant has the burden of proving four elements. First, the goods or services for which payment is sought would have been a permissible procurement had the proper procedures been followed. Second, the government must have received and accepted a benefit. Third, the claimant must have acted in good faith. And fourth, the amount

paid must not exceed the reasonable value of the benefit. Additionally, we are bound by the agency's version of factual events absent clear and convincing contrary evidence from the claimant. See DOHA Claims Case No. 02092001, *supra*; 72 Comp. Gen. 291 (1993); and 57 Comp. Gen. 415 (1978).

The position of 99 RSC is that it had a contract with Chenega for the work Ri3 claims to have performed. The person who Ri3 claims authorized them to do the work was an employee of Chenega, not an employee of the government. Therefore, 99 RSC concluded that Ri3 should seek payment from either the Chenega employee or Chenega. We agree with 99 RSC's determination. In this regard, the government was not unjustly enriched because the government, under a valid contract, paid Chenega for the services rendered. Although Ri3 may have acted in good faith in believing that it had a continuing relationship with the government, the services for which Ri3 seeks payment would not have been a permissible procurement because the government had a contract with Chenega for those services, not Ri3. Further, the final element of *quantum meruit* is not met because the government paid Chenega for its services. Therefore, the \$35,328.89 that Ri3 seeks exceeds the reasonable value of the benefit the government received.

Finally, even if Ri3 were able to meet the requirements for recovery under *quantum meruit*, interest would not be recoverable. Interest is not recoverable against the government in the absence of express authorization by contract or statute. See B-252778, Aug. 19, 1993.

Conclusion

The claimant's request for reconsideration is denied, and we affirm the June 18, 2015, appeal decision in DOHA Claim No. 2013-CL-052301.2 disallowing the claim. In accordance with DoD Instruction 1340.21 ¶ E7.15.2, this is the final administrative action of the Department of Defense in this matter.

Signed: Jean E. Smallin

Jean E. Smallin
Chairman, Claims Appeals Board

Signed: Catherine M. Engstrom

Catherine M. Engstrom
Member, Claims Appeals Board

Signed: Natalie Lewis Bley

Natalie Lewis Bley
Member, Claims Appeals Board