DECISION THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-212430 **DATE:** June 11, 1984

MATTER OF: General Clinical Research Center, University of California

DIGEST:

1. Claims for payment under valid contracts between Public Health Service (PHS) and University are not within jurisdiction of GAO. They should be resolved under the Contract Disputes Act (41 U.S.C. §§ 601 et seq.).

2. Where services were performed without a contract during last month of PHS hospital operation, University is entitled to quantum meruit recovery because services constituted a permissible procurement, Government received and accepted their benefit, contractor acted in good faith, and reasonable value of benefit received can be determined.

The General Clinical Research Center, University of California, San Francisco (University) requests that the General Accounting Office (GAO) authorize payment of a claim for $7,248.87 for services provided to the Public Health Service (PHS), Department of Health and Human Services (HHS). The claim is for the services of a full-time laboratory technician provided by the University and assigned to the San Francisco Public Health Service Hospital (Hospital) from 1979 until the Hospital closed on October 30, 1981.

The University bases its claim on three separate contracts covering fiscal years 1979, 1980 and 1981. The University states that for fiscal year 1979 (Contract No. HSA 52-79-217) only $10,637.32 of the $12,672 contract price has been paid by the Public Health Service. For fiscal years 1980 and 1981 (Contract Nos. HSA 52-80-179 and HSA 52-81-187) the University states that it paid cost-of-living and promotion increases to the technician's salary which were not included in the stated contract prices. According to the University, it took no action to resolve these items until after the terms of all three contracts had expired. In addition, reimbursement is requested for services provided without a contract during October 1981, the last month the Hospital was in operation.

The record indicates that the University first requested that the Public Health Service ratify the unpaid amounts claimed. The Bureau of Medical Services, Health Services Administration (now the Health Resources and Services Administration) responded that the amounts claimed represented "unauthorized procurements," and referred the University to GAO for settlement.

To assist us in evaluating this matter, we requested and have received information from the Public Health Service. In our letter to PHS we noted that demands for payment under valid contracts should generally be resolved under the Contract Disputes Act of 1978 (41 U.S.C. §§ 601 et seq.) and not by this Office. In response, PHS confirmed the validity of the three contracts, and agreed that the Contract Disputes Act should govern resolution of the claims related to those contracts. Accordingly, this Office is not authorized to settle the claims for the unpaid balance under the first contract, or the salary increases under the second and third contracts. Our jurisdiction in this matter extends only to the claim for services provided without a contract in October 1981.

There is a well-established rule that the Government has no legal obligation to pay contractors or others who have provided unauthorized goods or services. (Federal Crop Insurance v. Merrill, 332 U.S. 380 (1947).) However, where 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 by the receiving party to pay 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), 40 Comp. Gen. 447, 451 (1961), and B-207557, July 11, 1983.

First, we have no reason to question that the procurement would have been permissible had proper procedures been followed. The University had in fact provided the same services by contract for 3 prior years, and we are aware of no

statutory or other legal impediment. The record indicates that for the month of October 1981 neither the Hospital nor the University requested a contract to cover the technician's services. The Public Health Service has stated the opinion that no need for a contract existed because the Hospital was in a "shut-down phase." The relevant question here, however, is whether the technician performed services which were accepted by and of benefit to the Government during that last month.

The technician, whose job description included both patient and research related duties, continued to work during October 1981. Our information indicates that (1) patient care continued until the Hospital closed, and (2) the research project involved was continued at another Government facility after the Hospital closed. In our view, therefore, the PHS Hospital accepted the technician's services in October 1981, and the Government benefited both from the performance of patient services and from the contribution to on-going research.

Next, we cannot dispute the good faith of the University (or of the technician) under these circumstances. In view of the continuing workload, the long term relationship with the Hospital, and the special problems and confusions inherent in closing any such institution, the lack of either a contract or a contract request does not, in our opinion, evidence bad faith.

The only remaining issue, then, is reasonable price. With the exception of the $2,034.68 which the University claims as the outstanding balance under the first contract, a specific breakdown of the total amount claimed ($7,248.87) has not been provided. As a result, we do not know the amount the University is claiming for the technician's services during October 1981. Nevertheless, where there has been a previous contractual relationship between the parties, reasonable value has generally been determined in reference to the most recent contract price. In this case, determination of the reasonable value of the services provided will depend on the findings made under the Contract Disputes Act (discussed above). We therefore conclude that, following a determination under the Contract Disputes Act, the University is entitled to quantum

meruit recovery of an amount equal to 1 month's salary under Contract No. HSA 52-81-187.[1]/

Accordingly, the Public Health Service is authorized to pay the University this amount when it has been determined. As a bona fide need of the year in which the services were rendered, the expenditure is a proper charge against PHS's appropriation for fiscal year 1982.

for Comptroller General
of the United States

1/ The amount will be 1 month's salary based on the stated contract price, plus the promotion and cost-of-living increases for 1 month at the rate applicable for September 1981, to the extent they are allowed in the Contract Disputes Act proceeding for fiscal years 1980 and 1981.