

DECISION



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

FILE: B-195123

DATE: July 11, 1979

MATTER OF: Mathews Furniture Company DLG 02/02

DIGEST:

1. Supplier, who furnished carpets and drapes under purchase orders which exceeded Government employee's contractual authority, may be paid on quantum meruit/ quantum valebat basis, since Government received benefit and action has been ratified by authorized contracting official. However, payment is limited to amount for which authorized contracting officer could have contracted under mandatory Federal Supply Schedule contract.
2. Interest cannot be authorized where no law requires payment and first notice of interest charge appears on claimant's invoices.

AGC 00006

The Bureau of Indian Affairs (BIA), United States Department of the Interior, has requested a decision regarding the propriety of paying the invoices submitted by Mathews Furniture Company (Mathews) for carpeting and drapes at the Pueblo of Zuni. ←

Between October 18, 1977, and November 22, 1977, 18 separate purchase orders were issued by BIA's field representative to Mathews. The field representative's procurement authority was limited to \$500. Nine purchase orders were issued to Mathews on October 18, 1977, seven on November 7, 1977, and two on November 22, 1977. While none of the individual purchase orders were for more than \$500, the total of the 18 orders was \$8,064.04. There was a mandatory General Services

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Administration (GSA) Federal Supply Schedule (FSS) contract in existence at the time from which the carpets should have been purchased. Using the GSA FSS contract, the highest possible cost for carpet would have been \$6,473.13, though not for the exact type carpet supplied by Mathews. However, BIA has given no justification as to why the carpet available under the FSS contract would not have been suitable for its needs.

It is clear from the record that the purchases from Mathews were improper because the field representative exceeded his authority by splitting the requirements among the several purchase orders and ignoring the FSS contract.

Federal Supply Schedule (FSS)

Although the United States cannot be bound beyond the actual authority conferred upon its agents by statute or regulation, see United States v. Crance, 341 F.2d 161, 166 (1965), the courts and our Office have recognized that in appropriate circumstances payment may be made for services rendered on a quantum meruit basis (the reasonable value of work or labor) or for goods furnished on a quantum valebat basis (the reasonable value of goods sold and delivered). 40 Comp. Gen. 447, 451 (1961). Recognition of a right to payment on this basis, however, requires a showing (1) that the Government received a benefit and (2) that the unauthorized action has been expressly or impliedly ratified by authorized contracting officials of the Government. Defense Mapping Agency, B-183915, June 25, 1975, 75-2 CPD 15; The Singer Company, B-183878, June 20, 1975, 75-1 CPD 406.

Here the Government received a benefit from the performance by Mathews and an implied ratification may be inferred from the authorized contracting officer's negotiations with Mathews seeking a settlement. Anheuser-Busch, Inc. B-192739, September 29, 1978, 78-2 CPD 246.

Although ordinarily in a quantum meruit/quantum valebat situation payment would be the reasonable

value, where the item could have been contracted under the FSS contract, payment is restricted to the FSS amount. 34 Comp. Gen. (1954) and 30 id. 23 (1950). Since Federal agencies are required to procure from the FSS contracts, any amount over the FSS price would be unauthorized and not for payment. 6 Comp. Gen. 824 (1927). Thus, no contracting officer has the authority to procure at or ratify a price higher than the FSS price where no need has been established for an item other than that in the FSS schedule. Therefore, Mathews may be paid \$6,473.13 for the carpets plus \$650.45 for the drapes for a total of \$7,123.58.

the FSS amount

Regarding the payment of interest on Mathews' claim, it is well settled that the payment of interest by the Government on its unpaid accounts may not be made except where it is stipulated by contract or is provided by the laws of the United States. Mr. Lorenzo Moffett-Lease Termination, B-170539, July 30, 1975, 75-2 CPD 64. No law requires interest to be paid in the circumstances present here and the first notice of an interest charge appears on Mathews' invoices. Therefore, the payment of interest cannot be authorized. Morris Tile Distributors, Inc., B-183628, May 8, 1975, 75-1 CPD 299.

add this

R. G. Keller

Acting Comptroller General
of the United States