

DECISION



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

FILE: B-195173

DATE: July 16, 1979

MATTER OF: Federal Aviation Administration
Request for Advance Decision

AGC0030

DIGEST:

Even though costs incurred under contracts awarded pursuant to grant projects were based on cost-plus-percentage-of-cost contracting, contractor can be paid on quantum meruit/quantum valebat basis as agency has determined costs to be reasonable and Government received benefit of services.

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The Rocky Mountain Region, Federal Aviation Administration (FAA), Department of Transportation (DOT), has requested our Office's opinion as to whether certain costs incurred under contracts awarded pursuant to two grant projects of the Airport Development Aid Program (ADAP) are payable.

The projects involved are ADAP Project No. 6-30-0046-04, Kalispell, Montana, and ADAP Project No. 6-30-0012-05, Butte, Montana. Recent audits by the Office of the Inspector General, DOT, have disclosed that portions of the engineering contracts for the projects were based on a cost-plus-percentage-of-cost (CPPC) method of contracting.

Appendix "M" of the Federal Aviation Regulations, part 152, states that the CPPC method of contracting will not be used in connection with ADAP projects. FAA Order No. 2940.5, chapter 1, paragraph 9d, requires that the Comptroller General be consulted as to the propriety of payments under illegal contracts.

The FAA advised that at the time the contracts were approved, the contracts contained a "not to

exceed" cost limitation and, therefore, it was concluded they were not CPPC type contracts. The FAA has also determined that the costs are reasonable in amount and that steps have been taken to prevent further occurrences of this nature.

The contracts in question provided that the firm's profits were to be based on 15 percent of actual direct labor and overhead costs.

The fourfold test utilized to determine if a certain contract is a CPPC type involves whether (1) payment is on a predetermined percentage rate; (2) the predetermined percentage rate is applied to actual performance costs; (3) contractor's entitlement is uncertain at the time of contracting; and (4) contractor's entitlement increases commensurately with increased performance costs. Marketing Consultants International Limited, 55 Comp. Gen. 554 (1975), 75-2 CPD 384. The instant contracts clearly meet these tests.

The presence of a cost limitation in the contract does not save the contract from violating the prohibition contained in the FAA regulations. 38 Comp. Gen. 38, 40 (1958).

However, our Office and the courts have recognized that where goods are furnished or services rendered but the contract under which the performance occurred is void, an obligation on the United States arises to pay the value of the goods or services actually furnished upon an implied contract for a quantum meruit/quantum valebat. 33 Comp. Gen. 533, 537 (1954) and Pacific Maritime Association v. United States, 123 Ct. Cls. 667, 675-677 (1952). We find this rule to have equal application here, where the question is the eligibility of costs under a grant-type arrangement, the purpose of which was fulfilled by the rendering of the services.

As the FAA ~~has~~ determined the costs in question to be fair and reasonable and the Government received the benefit of the service, the costs may be paid.

R. F. K. Miller
Deputy Comptroller General
of the United States