

DECISION

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

Shapiro
119095

FILE: B-207492

DATE: July 30, 1982

MATTER OF: Equal Employment Opportunity Commission

DIGEST:

Purchases for computer services were apparently made by authorized agency representatives. However, purchases--conducted by negotiation under "small purchases" authority--were unauthorized since aggregate amount of purchases exceeded statutory limit of \$10,000. Nevertheless, payment for services on quantum meruit basis may be considered in circumstances since contracting agency was not prohibited by any law or regulation from contracting for work itself and purchases have been impliedly ratified.

An authorized certifying officer of the Equal Employment Opportunity Commission (EEOC) has requested, pursuant to 31 U.S.C. § 82d (1976), an advance decision by our Office regarding the propriety of paying several invoices for small purchases of computer services to code personnel data in connection with enforcement litigation. The services were apparently procured by authorized representatives of EEOC's Chicago District Office under the "small purchases" authority, which authorizes the negotiation of small purchases aggregating \$10,000 or less.

In connection with EEOC v. Hiram Walker, No. 79C4079, (U.S.D.C. Northern District of Ill., Eastern Div.), services were procured from several individuals under various purchase orders. These purchase orders, executed between April and August 1981, total \$23,500, an aggregate amount exceeding the small purchase authorization. Additionally, in connection with two other litigation proceedings, other purchase orders were issued.

The charges for the computer services procured by purchase order for all three enforcement proceedings total approximately \$26,000. On receipt of these charges

at EEOC headquarters in Washington, D.C., the propriety of the procurement method was questioned because of the total amount involved. However, before the procurements were questioned and payments on submitted invoices deferred, the Chicago District Office had paid more than half of the total charges.

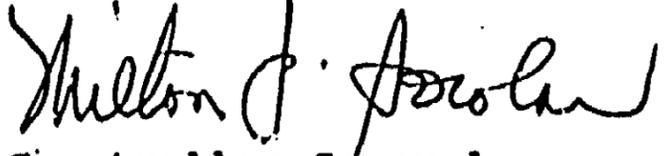
On review of these purchases by the EEOC Legal Counsel Division, the legal counsel determined that the purchases in connection with EEOC v. Hiram Walker, supra, exceeded the amount authorized for small purchases and that the small purchase negotiating authority "should not have been utilized." The purchase orders executed in connection with the other litigation proceedings, however, were determined to have been proper since the charges incurred for each proceeding were less than the \$10,000 limit for small purchases. We note, however, that all the services appear to be of a recurring nature for which the EEOC presumably has a demand throughout the fiscal year in an amount exceeding \$10,000. There has been no showing of justification for procuring services separately for each proceeding. It therefore appears that all of the questioned procurements exceeded the authorized monetary limit for small purchases and must, therefore, be considered to be unauthorized acts even though EEOC was not precluded from contracting for the work itself. As we stated in B-157052(2), August 16, 1965:

"Regarding the authority to purchase supplies or services in the open market (the small purchase procedure), we have stated that the splitting of needs so that each individual purchase will be within the limit prescribed by statute for open market purchases is not authorized; and that, where there is a continuing need for supplies or services of the same character, the total cost of which during the fiscal year, or part thereof, will exceed, or reasonably may be anticipated to exceed, in the aggregate, the amount authorized to be expended for a procurement without advertising, the law requires that, when practicable, there be formal advertising for bids for the furnishing of such supplies or services. B-32428, February 22, 1943. See 5 Comp. Gen. 41. In arriving at the aggregate amount involved in any one transaction, there must be included all supplies and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids."

It is recognized that the acceptance of benefits by authorized representatives of the Government with knowledge of the circumstances may, in the proper case, result in a ratification of an unauthorized act by implication so as to obligate the Government to provide compensation on a quantum meruit basis. See B-164087, July 1, 1968, and cases cited in text. It is clear that the EEOC benefited from the services received, and we are of the opinion that the failure of EEOC's authorized representatives to curtail the contractors' activities--of which the representatives were apparently on notice--resulted in a ratification of those actions by implication. See Russell A. Williams, et al. v. United States, 130 Ct. Cl. 435, 447 (1955), where the court said: "It seems incredible that [the authorized contracting officer] did not know all about [the unauthorized act] and by his inaction ratify it."

The record shows that the needed services were performed and that the charges claimed are reasonable to the extent that duplicate charges are not involved.

Accordingly, payment on a quantum meruit basis may be allowed if otherwise proper and correct.

for 
Comptroller General
of the United States