

COMMISSION ON AUDIT RESOLUTION NO. 86-58 November 15, 1986

SUBJECT : Policy on the Recovery by Government Contractors on the Basis of Quantum Meruit.

WHEREAS, in the adjudication of claims arising from void government contracts, the issue that is sometimes presented to the Commission on Audit for resolution is whether or not recovery against the government under such contracts may be allowed on the basis of the quantum meruit principle;

WHEREAS, upon imperatives of public interest which necessarily override pretended considerations of equity, this commission considers it vital to adhere to a policy of disallowing recovery on the basis of quantum meruit where the contract is beyond the powers and objectives of the implementing agency concerned, and where there is patent violation of the mandatory legal provisions relating to competitive public bidding as well as the existence of the corresponding appropriation covering the contract cost and those prohibiting public officials from having a financial interest in the contract executed by them;

WHEREAS, the mere delay in the accomplishment of the required certificate as to availability of funds (CAF) to support the contract presents an entirely different situation considering that since the covering funds have in fact been appropriated and budgetarily allotted to the implementing agency, the delayed execution of the CAF would not alter such fact and, hence, would not defeat the purpose of the law;

WHEREAS, this Commission hereby resolves that where the only defect or irregularity in the claim under a government contract is the delayed execution of the certificate as to availability of funds, a recovery against the government under the equitable principle of quantum meruit based upon the reasonable value of the services performed and the market value of the materials and goods delivered but not exceeding the contract price may be allowed in audit, subject to the following conditions:

1. That funds have already been appropriated and allotted to the implementing agency as of the execution of the contract;
2. That all other statutory and regulatory requirements for the execution of government contracts have been complied with as verified by the auditor concerned;
3. That the delay in the execution of the CAF is not attributable to any fault on the part of the contractor or is through inadvertence;
4. That the delay in the execution of the CAF is reasonable as determined by this Commission upon a circumspect evaluation of the facts and circumstances of the case. Any unreasonable delay cannot be countenanced;
5. That there is no evidence of bad faith on the part of the contractor in the performance of the contract;

6. That the contractor is willing, and so undertakes, to abide and be bound by the evaluation by the implementing agency of the claim, the basis of which is to be reviewed by the auditor concerned as to its reasonableness;

7. That a report on such auditorial review, together with a verified CAF, is filed with the records of the claim;

8. That all claims are elevated by the Unit Auditor to the Chairman of this Commission who is entrusted with the implementation of this Policy for the determination of compliance with the conditions above set forth and for final approval of the payment of the claims.

Strict adherence to the guidelines hereinabove set forth is hereby enjoined.

Let a copy of this Resolution be furnished all auditors and agency personnel involve in government contract administration, for their information and guidance.

November 15, 1986.

(SGD.) TEOFISTO T. GUINGONA, JR., Chairman
(SGD.) BARTOLOME C. FERNANDEZ, JR., Commissioner
(SGD.) EUFEMIO C. DOMINGO, Commissioner