



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20543

31015

B-176498

June 6, 1973

Avix Associates Inc.
5406 Reisterstown Road
Baltimore, Maryland 21215

Attention: Mr. Ivan Stern
President

Gentlemen:

Reference is made to your letter of June 30, 1972, and subsequent correspondence, requesting payment on a quantum meruit/quantum valent basis of a claim in the amount of \$12,529 arising under cost-plus-a-fixed-fee contract No. F33615-69-C-1585 with the Air Force Systems Command, Wright-Patterson Air Force Base.

Paragraph (b) of the "Limitation of Cost" clause of the contract provided that the Government was not responsible for reimbursing the contractor for costs in excess of the estimated cost set out in the contract. The estimated cost could be increased by the contracting officer upon advance notice from the contractor in accordance with paragraph (a) of the clause. You failed to provide such notice and the contracting officer refused to approve the overrun claim. You appealed to the Armed Services Board of Contract Appeals and subsequently withdrew the appeal "with prejudice." Your subsequent application for relief under Public Law 85-604, 50 U.S.C. 1431-1435, also was denied.

You now seek relief from our Office on a quantum meruit/quantum valent basis. However, in Hawkins v. United States, 96 U.S. 689, 697 (1877), it was stated:

Express stipulations cannot in general be set aside or varied by implied promises; or, in other words, a promise is not implied where there is an express written contract, unless the express contract has been rescinded or abandoned, or has been varied by the consent of the parties. Hence, the rule is, that, if there be an express written contract between the parties, the plaintiff in an action to recover for work and labor done, or for money paid, must declare upon the written agreement so long as the special agreement remains in force and unrescinded, as he cannot recover under such circumstances upon a quantum meruit. * * *

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Implied promises or promises in law exist only when there is no express promise between the parties, — expressum facit cessare tacitum. * * *

Accordingly, there is no legal basis in the circumstances to support your quantum meruit/ quantum valebant claim and it is therefore denied.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States