

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

APPEAL OF:

WENDELL W. WEBSTER, TRUSTEE)	
PITTS MOTOR HOTEL, INC.)	CAB No. D-1008
)	
Under Contract No. JA/85234)	

For the Appellant: Linda M. Correia, Esq., Webster & Frederickson. For the Government: Melvin W. Bolden, Jr., Assistant Corporation Counsel.

Opinion by Administrative Judge Lorilyn E. Simkins, with Administrative Judges Jonathan D. Zischkau and Matthew S. Watson, concurring.

OPINION

This case involves a breach of contract claim against the District of Columbia Department of Human Services ("DHS") by Wendell W. Webster ("Appellant" or "Trustee"), trustee in bankruptcy for the Pitts Motor Hotel, Inc. ("Pitts" or "Hotel"). The Appellant alleges that the District is liable for failing to pay for food services for the homeless provided by the Hotel from January 1990 through August of 1990, and for ultimately terminating the relationship. Appellant claims that the terms of a 1985 contract and a 1986 three-month letter contract defined the relationship between the District and the Hotel. Although both the 1985 contract and the 1986 letter contract had long since lapsed, Appellant contends that the terms of those contracts, and the continuing course of conduct between the parties created an implied-in-fact contract, which the District was without authority to modify unilaterally. Additionally, Appellant claims that DHS illegally terminated its contract with Pitts for the provision of shelter, meals, office space and clinic space in August 1990. Appellant seeks \$753,679.48 for services due and owing and interest. The District argues that since no written contract existed between the parties during the period in question that DHS properly and fully paid Appellant on a quantum meruit basis. The parties presented testimony during two days of trial on November 2, and November 4, 1998. Based upon our review of the record and analysis of the law, we conclude that Appellant's claim lacks merit. Accordingly, the claim is denied.

Factual and Procedural Background

The relationship between the District of Columbia and Pitts Motor Hotel dates back to at least 1968, when the Department of Welfare (a predecessor agency to the DHS) used the Hotel to shelter homeless families who could not be accommodated in city-owned shelters. (Appeal File ("AF") Ex. 153). For a period of 10 years and without the benefit of a contract, the District reimbursed Pitts for providing shelter services as costs were incurred. In 1978, DHS ended this arrangement and began using other resources to provide shelter for the homeless.¹

Beginning in fiscal year 1980, DHS's Office of Emergency Shelter and Support Services ("OESSS") issued a Request for Proposals seeking shelter services for homeless families. Pursuant to the RFP, DHS awarded a contract to Pitts. (AF Ex. 153). In December 1981, a second solicitation (JA/82234) was issued, which resulted in another contract award to Pitts. (AF Ex. 2).² Contract No. JA/82234 extended from July 1, 1982 through June 30, 1983. (AF Ex. 153). The parties executed contracts yearly from June 30, 1983 until June of 1985. (*Id.*) On June 26, 1985, Pitts and the DHS executed a letter contract, which was definitized as JA/85234, on July 15, 1985. The contract term was effective from July 1, 1985 to June 30, 1986 (the "1985 contract").

Under the terms of the 1985 contract, Pitts agreed to provide DHS with the exclusive use of the Hotel for shelter services, and was required to keep all of the Hotel's 52 rooms in a state of readiness to accept families referred by DHS. (AF Ex. 4).

¹ A 1986 study by the DHS Commission on Social Services entitled, *Comprehensive Plan for Homeless Families*, provides some historical background on how the District has managed homelessness. This study indicates that shelter and emergency services for the homeless have been provided by the District since at least 1965, when the District government opened its first family shelter, a ten-unit apartment building staffed and run by the former Department of Public Welfare. Shortly thereafter, a second family shelter was opened. The need for shelter services continued to increase and in 1968, the District entered into an informal relationship with Pitts to shelter families when the two city shelters were full. In the early 1980's, DHS closed the two City-run shelter's because of budget and resultant staff reductions. The District then established contracts with hotels and motels to house the District's homeless. (AF Ex. 154).

² RFP No. JA/82234 summarizes the requested services as follows: The services provided shall include, but not be limited to, a 24-hour facility to house a minimum of 10 and a maximum of about twenty (20) families. The Shelter services [are] to include sleeping, laundry and bathing facilities; provision of meals, or provision of food and cooking facilities; a children's recreation program, and such counseling as is necessary to help families make full use of the shelter. Under the RFP, the proposed contractor was also to provide an office for DHS social service staff. (AF Ex. 1).

Additionally, Pitts agreed to provide three meals per day to the families sheltered at the Hotel, as well as meals to persons transported to the Hotel from other shelters. The contract called for the District to pay Pitts \$42.85 for each room per night; \$12.48 per person per day for meals, with a guaranteed minimum payment for three meals per day for 144 persons for the entire contract year regardless of the actual number of clients served; and \$7,280.00 per month for office space for DHS staff, utilities and janitorial services.³

The 1985 contract initially provided for payment to Pitts of \$1,567,001.00 (AF Ex. 4, at 6). Amendment No.1 to the 1985 contract, executed on October 31, 1985, increased the cost by \$97,500.00 for an adjusted cost price of \$1,664,501.00, to pay for meals in excess of the guaranteed minimum. (AF Ex. 5). In the late 1980's, DHS housed homeless families in two types of shelters. DHS had contracts with various hotels, motels and non-profit providers, such as the Salvation Army, and My Sister's Place, to provide emergency facilities which were designed to provide shelter on a short-term basis. In addition to the Pitts Motor Hotel, the District contracted with the General Scott Inn, the Capital City Inn, the Braxton Hotel and the Hospitality House as emergency shelters. Families were bussed from those facilities to Pitts for food services. (Tr. 29-30, AF Ex. 181). DHS also used apartments designated as transitional facilities which were designed to provide shelter for families for up to 90 days. When all contract facilities were operating at capacity, homeless families were housed on the "open market" in hotels and motels for which the District would pay the rate normally charged the general public. (AF Ex. 154, at 8-9, and Tr. 97-98). On January 28, 1986, Amendment No. 2 increased the cost by \$474,339.84 to \$2,138,840.84 to "provide additional funds for families/persons in open market facilities and for those in excess of present contract cost." (AF Ex. 6).

On July 1, 1986, Pitts and Vallie D. Brydsong, a DHS contracting officer, executed a letter contract (the "1986 letter contract") authorizing Pitts to continue providing shelter services. The 1986 letter contract, unlike the 1985 contract, required Pitts to provide "meals for families on open market, walk-ins and for families in non-contract facilities where food is not provided." The letter contract also states:

Your firm/you will be remunerated for any cost incurred if contract is not

³ JA/83234, the contract covering the period from July 1983 to June 30, 1984, required Pitts to hold in readiness 48 rooms, but did not include a guarantee of the number of meals served. (AF No.2).

approved by Procurement Review Committee (PRC). If approved by the PRC, it is anticipated that proposed contract JA/85234 will be executed for the period July 1, 1986 through September 30, 1986. . . . The letter contract, when merged with a definitized contract amendment, shall be for an extended three (3) month period.

Any and all costs related to the three (3) month extension amendment, including all direct and indirect costs shall not exceed . . . (\$616,636.80) for services rendered throughout the entire contract amendment period. The appropriation for this procurement is 86 100 JA AFDC 501 18 APPR, MER# CS646A. The actual cost as cited is subject to approval by the DHS Contract Review Committee. This is fixed price contract and the Department agrees to remunerate your firm/you monthly at the rate of . . . (\$12.48) [per person, per day]⁴ not to exceed . . . (\$616,636.80). These additional funds are to cover the cost of meals retroactive to April 1, 1986 through the end of the contract period.

....

Any monies paid to the Contractor under this letter contract and the definitized contract shall be subject to available appropriation and the above stated payment limitations.

....

The initial contract, when executed, will supersede this document.

(AF Ex. 8). There is no indication in the record that this letter contract was ever approved by the PRC. If the letter contract was not approved, the terms seem to provide that Pitts would be compensated for its incurred costs in lieu of contractual pricing. If approved by the PRC, the letter contract was to be effective for 90 days. No definitized contract was ever executed by the parties. Thus, the letter contract, if valid, expired on September 30, 1986.

⁴ An amendment to the letter contract, executed on July 16, 1986, replaced the words "per hour" with "per person, per day." (AF Ex. 10).

From October 1986 until February 1990, DHS continued to pay Pitts for food services at a rate of \$12.48 for three meals per day for every person authorized by DHS to have meals at Pitts, even if the meals were not served by Pitts.⁵ (AF Exs. 167, 168, 170 & 175). On a weekly basis, DHS would deliver a list of "Open Market" families who were living at various other motels and shelters who were authorized to eat at Pitts. The list was updated daily by telephone. (AF Ex. 172, Tr. 27-37). Pitts "accepted these updated lists as a minimum guarantee of clients authorized to be fed." (AF Ex. 172, at 2). Each month Pitts staff would type the complete list of authorized families and prepare invoices based on the number of people on the list. (See AF Ex. 85). In addition, Pitts staff prepared a separate invoice for occupancy of the Hotel rooms. (Tr. 27-37, 39-40).

On February 7, 1990, Peter G. Parham, Director of DHS, advised Pitts that due to a mandate by the City Council "to find alternate ways to house the homeless," retroactive to January 27, 1990, the terms of compensation would be changed. (AF Ex. 162). In the February 7 letter, Mr. Parham informed Pitts that: "We have been reimbursing you at \$42.85 per room per day for all 51 rooms.⁶ We will continue to pay this rate only for rooms occupied by DHS families." Mr. Parham's letter also advised:

OFFICE & CLINIC SPACE

The basis for the present reimbursement rate was established on December 16, 1987 by a Department official and you, and was as follows:

Clinic	:	\$15 per sq. ft.	- 615 square feet	Total
Office space	:	\$15 per sq. ft.	- 1359 square feet	Total

Since we have reduced the space used for offices by 494 square feet, our reimbursement rate will be:

Clinic	:	$\$15 \text{ sq. ft.} \times 615 \div 12 = \768.75
Office space	:	$\$15 \text{ sq. ft.} \times 865 \div 12 = \1081.25

⁵

According to a July 2, 1990, letter from Mr. Pitts to DHS, for ten years the Hotel consistently billed DHS for "Open Market Meals" on the basis of meals authorized by DHS and not on the basis of meals consumed. (AF Ex. 172, at 2).

⁶ At various places in the record the number of rooms at the Hotel is cited as 51 and at other times 52.

MEALS

As mentioned above, we have been guaranteeing (3) meals per day for 144 persons at \$12.48 per day. Moreover, we pay this same rate for each person served three (3) meals per day above the guarantee. The reimbursement rate will remain \$12.48 per day; however, we will eliminate the guaranteed minimum population. Further, when less than three (3) meals are served an individual, we will reimburse as follows: Breakfast - \$2.25; Lunch - \$3.99; and Dinner - \$6.24.

(Id. at 2).

The Hotel objected to Mr. Parham's letter and claimed that it was entitled to payment based on the number of persons authorized by DHS to have meals. (AF Exs. 165, 168 & 170). Billings submitted by Pitts for March and April 1990 reflected the changes in billing rates and methods for hotel rooms and office and clinic space, but Pitts continued to submit invoices for every person who was authorized by DHS to eat. (AF Ex. 167). In a letter dated March 12, 1990, to the Acting Chief of OESSS, Mr. Pitts submitted "under protest" revised invoices for the month of February, 1990. (AF Ex. 164). DHS acknowledged that it had paid Pitts based on the number of meals authorized by DHS for many years. (AF Ex. 170).

In a letter dated March 14, 1990, the Director of DHS informed Pitts that DHS was reducing the number of families housed at Pitts, but would pay for each room occupied. The letter also informed Pitts "[w]hen all families are move out of the Pitts Motor Hotel, our relationship with your organization will then cease." (AF Ex. 182). DHS terminated the use of the Hotel for meal services on July 7, 1990, and discontinued the use of the Hotel to shelter families at the end of July 1990. (Tr. at 135).

Between January and July of 1990, Pitts continued to calculate charges and submit invoices for meals to DHS according to the number of persons authorized to have meals. (AF Exs. 164, 82-141). Pitts charged the District for a minimum of 144 persons per day and for each person authorized by DHS to eat at the Hotel. The method of billing was based on "the shelter census without relationship to services actually provided or costs incurred by Pitts." (AF Ex. 167, at 1). DHS noted that by "billing DHS based on the number of persons authorized to receive meals instead of the number for whom food was actually purchased and prepared, Pitts has been able to reap unauthorized profits." (AF Ex. 167, at 3).

On April 1-3, April 14 - 21, and May 20-31, 1990, DHS stationed a staff person in the dining room at Pitts at each meal. The DHS staff person required the head of each household to sign in, list the number of persons in the family, the name of the shelter to which the family was assigned, the room number, and the number of persons who were eating at the particular meal. (AF Ex. 168). In a letter dated June 8, 1990, to the attorney for Pitts, DHS's General Counsel set forth the following chart which summarized the results of the survey and the comparative costs of the actual meals served and the number and cost of the meals which were billed by Pitts:

Dates	Meals Counted	Cost	Meals Billed	Cost
April 1-3 and 14-21	5,597	\$26,272.12	25,830	\$107,452.80
May 20-27 30-31	6,092	\$27,827.40	No number is indicated in the document	\$101,419

(*Id.*). Based on the data gathered on the 11 days in April, DHS calculated that Pitts was owed \$78,516.36. Pitts, however, billed for April as follows:

Meals for Persons sheltered at Pitts	\$ 63,498.24
Meals for Open Market Clients	\$233,151.36
Persons Served Less than 3 Meals	<u>\$ 514.34</u>
TOTAL	\$297,164.94

For May, based on extrapolating data gathered on the 9 days for which service levels were known, DHS calculated that it owed Pitts \$87,827.40. Pitts, however, billed for May as follows:

Meals for Persons sheltered at Pitts	\$ 66,268.80
Meals for Open Market Clients	\$ 245, 858.08
Persons Served Less than 3 Meals	<u>\$ 152.52</u>
TOTAL	\$ 312,279.40

In a letter dated April 2, 1990, Mr. Pitts wrote to Mr. Parham challenging the accuracy of the counting procedure employed on April 1, as well as the new billing method. He wrote:

First of all, many meals are not served in the restaurant. Formulas and baby food are served to clients at out front desk

When we received this daily list of clients authorized to receive meals the following day, we then schedule the number of cooks, dishwashers, food service workers and waitresses needed to handle this authorized number. Further, we prepare in advance the amount of food necessary to feed this group. We consider the daily number of persons authorized a guaranteed minimum number.

Therefore, our charges for meals are based on the number of meals authorized each day by your office and not the number of meals actually served or consumed. If for some reason an authorized family decides to miss their meals that we have already prepared for them in advance, this fact does not alter our charges.

(AF Ex. 165, at 2-3).

By letter dated June 8, 1990, DHS set forth reimbursement procedures for Pitts based on the actual service of meals. The new procedure was effective June 1, 1990. (AF Ex. 167). The June 8 letter provides:

On Monday of each week, the DHS Office of Emergency Shelter and Support Services will notify Pitts of the number of persons for whom DHS will guarantee payment at each meal for the week beginning with the following Monday. DHS will continue to post a staff person at each meal served at Pitts, and DHS and Pitts will jointly verify the number of persons served at each meal by DHS and Pitts both signing the daily sign-in sheets.

(*Id.*, at 3-4).

DHS explained that the per meal rate would remain the same, and that when the number of meals served exceeded the guarantee, DHS would pay Pitts for meals served above the guaranteed numbers at the same rate. The June 8 letter also set forth new invoicing procedures. Under these procedures, Pitts was required to prepare an itemized listing of each person served a meal each day, and submit it monthly with Pitts invoice.

(*Id.*).

Pitts continued to dispute the newly-imposed method of reimbursement. In a letter dated June 11, 1990, Pitts' attorney wrote: "Meals served is not the correct basis for payment, but even if it were your calculation significantly understates the number of meals actually served." (AF Ex. 168). The letter states that more than 100 infant meals were served through the front desk, and were not counted by the DHS monitor. (*Id.*). In this letter, Pitts' attorney claimed that the District still owed Pitts \$440,000 for balances from April and May. (AF Ex. No. 169). The letter did not include a list of the families who had received the infant meals.

On June 18, 1990, DHS responded to concerns raised in the June 11 letter, and noted that the "the difference between the number of meals which we have counted as actually having been served, and the number of meals for which your client has presented invoices, is large enough to raise serious questions about the billing procedure, irrespective of any inaccuracies you feel may have taken place." (AF Ex. 170, at 2). DHS asserted that Pitts was billing for "the provision of meals to every single client of the DHS emergency shelter program authorized to receive them, when only one-fifth of those meals [were] actually provided." (*Id.*). DHS also mentioned that its past failure to reconcile the invoices which Pitts submitted with the actual services provide prior to issuing payment for the full invoiced amount did not obligate DHS to continue payment by that method. (*Id.*). DHS invited Pitts to submit whatever documentation that it had to demonstrate that DHS' figures were inaccurate, and to demonstrate the actual expenses incurred by Pitts. This letter also invited Pitts to suggest any other reasonable method that DHS could use to verify the meals served. (*Id.*).

By letter dated June 20, 1990, Pitts' attorney informed DHS that the Hotel could no longer serve meals to homeless families from other shelters after June 23, 1990, unless DHS remitted approximately \$440,000 to Pitts. (AF Ex. 185). By letter dated June 22, 1990, DHS stated that it would not remit the invoiced amount, because Pitts failed to "suppl[y] documentation that would make it possible for DHS to further reimburse Pitts for services rendered during April and May 1990." (AF Ex. 186). DHS then specified new terms under which it would only purchase meals for persons sheltered at Pitts:

Based on our monitoring data for the 21 days referenced in our letter of June 8, 1990, persons eating at Pitts who were sheltered at Pitts averaged 67 for breakfast, 61 for lunch and 98 for dinner. Therefore, for the period beginning June 23, and until further notice, DHS will guarantee payment

for 65 meals for breakfast, 65 meals for lunch and 100 meals for dinner at the rates referenced in our June 8, 1990 letter

As stated in our letter of June, 8, 1990, DHS will continue to post a staff person at each meal and have each family sign in the number of people who are eating. Pitts must document any meals served in excess of the above guarantees by confirming the number of persons served at each meal with the DHS person who is managing the sign-in sheets. The sign-in sheets will be the authoritative reference for determining the number of persons served at each meal. We are open to any alternative suggestions from Pitts for a way of confirming the number of persons served at each meal.

(AF Ex. 186).

In a letter dated July 1990, Mr. Pitts wrote to the Director of DHS claiming that DHS owed the Hotel \$883,517.05, and that it would be forced into bankruptcy if payment were not made forthwith. On July 6, 1990, Pitts' attorney informed DHS that the Hotel would no longer be able to provide any food services. (AF Ex. 174).

By letter dated July 12, 1990, attorneys for Pitts again protested the change in the method of calculating payment for meals, stating that "the course of performance remains a term of the agreement between DHS and the Hotel until such time as the parties agree otherwise. DHS has waived any right to revisit the terms of its agreement with the Hotel." (AF Ex. 175). The letter also notes that DHS paid the Hotel based on authorized meals for the months of February and March 1990, but concludes that the sum paid by DHS was \$62,212.52 less than actually owed. The letter maintained that DHS owed the Hotel \$201,480.432 for non-food services and \$682,036.63 for food services, for a total of \$883,517.05. Pitts' attorney also demanded that DHS pay Quick Payment Act interest on these amounts. (*Id.*).

Pitts filed for bankruptcy protection in the United States Bankruptcy Court for the District of Columbia on July 31, 1991. The case was converted from Chapter 11 to Chapter 7 on April 12, 1995. On April 20, 1995, Wendell W. Webster was appointed as the Chapter 7 Trustee. On September 24, 1996, the Trustee filed an administrative claim pursuant to the Procurement Practices Act, D.C. Code § 1-1188.5, with the Interim Director of the Department of Administrative Services. The Interim Director failed to issue a decision within the statutory 90 days of Appellant's filing. Based on the deemed denial of the claim, Appellant filed a claim with the Board on March 11, 1997.

The record contains the following chart, prepared by the Appellant, summarizing the invoiced amounts which Pitts submitted monthly and the amounts that DHS paid Pitts from February 1, 1990 through September 5, 1990:

Date	Invoice	Invoiced Amount	Payment	Balance according to Pitts
2/01/90	No. 126	\$135,828.66		\$135,828.66
2/01/90	No. 127	\$235,456.00		\$371,284.66
2/16/90			\$309,072.14	\$ 62,212.52
3/01/90	No. 128	\$123,881.25		\$186,093.77
3/01/90	No. 129	\$215,858.24		\$401,922.01
3/09/90	No. 130	\$ 16,920.46		\$418,842.47
3/09/90	No. 131	\$ 37,922.43		\$456,764.90
4/02/90	No. 132	\$135,828.66		\$592,593.56
4/02/90	No. 133	\$252,595.20		\$845,188.76
4/05/90			\$372,744.56	\$472,444.20
4/30/90			\$375,455.41	\$ 96,988.79
5/01/90	No. 134	\$131,846.19		\$ 228,834.98
5/01/90	No. 135	\$243,270.56		\$427,105.54
5/30/90			\$130,563.28	\$341,542.26
6/01/90	No. 136	\$135,828.66		\$477,370.92
6/01/90	No. 137	\$256,649.12		\$734,020.04
6/08/90			\$168,930.35	\$565,089.69
7/02/90	No. 138	\$131,846.19		\$696,935.88
7/01/90	No. 139	\$185,028.48		\$881,964.36
7/02/90	No. 140	\$ 17,800.02		\$899,764.38
7/12/90			\$139,312.34	\$760,452.04
8/27/90	No. 141	\$ 70,364.00		\$830,816.64
9/05/90			\$77,137.16	\$753,679.48

(AF Exs. 141-147.)⁷

Appellant claims that the District owes it \$753,679.48, plus interest.

DISCUSSION

The Appellant first argues that the District and Pitts had an implied-in-fact contract containing the same terms and conditions enumerated in the written contract executed in 1985, and the 1986 letter contract. Alternatively, Appellant argues that the District and Pitts "assented annually to succeeding contracts with the same terms as the original written contract, including the scope of services required and provided, the rates of compensation and the temporal term of one year." (Appellant's Proposed Findings of Fact and Conclusions of Law ("App. F of F"), at 11, ¶12). In other words, Appellant argues that the District and Pitts had either an express contract or an implied-in-fact contract obligating the District to maintain the homeless program at the Hotel with the same terms and conditions, to which the District had no authority to withdraw from or unilaterally modify, except at the anniversary date of the contract.

The Appellant refers to the principle that when parties to a contract continue to perform under an expired contract, they assent to the same terms and contract conditions as contained in the expired contract. *Martin v. Campanaro*, 156 F.2d 127 (2d Cir.), *cert. denied*, 329 U.S. 759 (1946); *Landa v. Astin*, 193 F. 2d 369, 371 (D.C. Cir. 1951)). The Appellant also cites *United States v. Winstar Corp.*, 518 U.S. 839, 895 n.39 (1996) for the proposition that when the government contracts with commercial vendors, it is generally treated like a private enterprise. It is true that the District, like the Federal government, is ordinarily treated just as a private contractor.

'When the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private individuals.' *Lynch v. United States*, 292, U.S. 571, 579 (1934).

Winstar, 518 U.S. at 895 (1996).

However, the government also has "the power to abrogate common law contract

^{7/} AF Exhibit No. 147 is a summary of AF Ex. 77, 79, 82, 85, 88, 89, 93, 95, 99, 102, 108, 111, 114A, 115, 120, and 140-146.

doctrines by specific legislation.” *Torncello v. United States*, 691 F.2d 756, 762(1982). In this instance, the common law doctrine of continuing assent after the expiration of a contract has been invalidated by the District of Columbia Procurement Practices Act of 1986 (“PPA”) (D.C. Code § 1-1181.1 *et seq.*).

By the time the purported 1986 letter contract expired in September 1986, the Council had enacted the PPA. Pursuant to the PPA, a number of statutory requirements had to be satisfied in order to enter into a valid contract. Those statutory requirements include the requirements relating to competition and source selection, *e.g.*, D.C. Code §§ 1-1183.2 to 1-1183.5, and 1-1183.12; the requirement that contracts and modifications be in writing, *id.* § 1-1181.7(13); the requirement that authorized contracting officers sign contracts, *id.* § 1-1181.7(15), D.C. Law 6-85, § 105(a); and the requirement that contracts receive various executive, financial, and legal reviews and approvals, *e.g.*, D.C. Law 6-85, § 105(b)(2); D.C. Code § 47-312. In addition, every determination required by the PPA must be in writing, based upon written findings of the public official making the determination, and retained in the official contract file. D.C. Code § 1-1181.6. Unquestionably, the District and Pitts had not satisfied any of these statutory requirements.

The PPA further provides:

(d)(1) Except as otherwise provided in this chapter, a contract which is entered into in violation of this chapter or the rules and regulations issued pursuant to this chapter is void, unless it is determined in a proceeding pursuant to this chapter or subsequent judicial review that good faith has been shown by all parties, and there has been substantial compliance with the provisions of the chapter and the rules and regulations.

(2) If a contract is void, a contractor who has entered into the contract in good faith, without directly contributing to a violation and without knowledge of any violation of the chapter or rules and regulations prior to the awarding of the contract, shall be compensated for costs actually incurred.

D.C. Code § 1-1182.5.

It is clear that by October 1, 1986, at the latest, no valid contract existed under which Pitts was providing the shelter and related services to the District. Even if Pitts

and certain DHS officials *believed* that a valid contractual arrangement existed for the services provided from October 1, 1986, through 1990, the record demonstrates that no such contract existed.

For about three and one half years after the expiration of the purported 1986 letter contract, the District paid Pitts based on the census lists of homeless persons, without regard to the number of persons Pitts actually feed. DHS personnel apparently never requested documentation of the number of homeless people actually served meals until after February 1990. It is apparent that Pitts was able to reap profits of an unknown and perhaps unprincipled proportion for an extraordinarily long period of time. Appellant now argues that this level of compensation, to which Pitts had grown accustomed, should be endorsed by this Board. We will not do so.

The District's efforts in 1990 to compensate Pitts for the services which the District had actually received, and its monitoring of the services did not violate the terms of any contract. On the contrary, these changes were the legitimate attempts by DHS to correct and end an unauthorized and illegal arrangement with Pitts. Furthermore, Mr. Pitts, a veteran contractor of more than 20 years with the District, was not an unsuspecting victim in this case. Pitts knew that it was providing services without the benefit of a valid contract, and that this was outside the "normal course of conducting business." (See AF Ex. 187, at 4-5).⁸

Precisely because of well-known abuses such as those apparent in this case, the Council enacted legislation amending section 105 of D.C. Law 6-85, codified at D.C. Code § 1-1181.5, to add the following provisions:

(1) No District official or District employee subject to this chapter shall authorize any payment for the value of goods and services received without the benefit of a valid written contract, except that this subsection shall not apply to a payment required by a court order or a final decision of the

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In a July 16, 1990, memorandum to the Director of DHS, Mr. Pitts writes:

[S]pecific requests or instructions regarding changes in services provided to clients were frequently conveyed by telephone call or personal visit. This process, of course, bypassed the normal written notification which would have been handled by designated persons in your contracts department....[M]uch of what occurred outside of the purview of the written contract was requested personally by DHS officials....[T]his is admittedly not the normal course of conducting business.... (AF Ex. 187, at 4).

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(2) Until October 1, 1991, if the Mayor cannot comply with paragraph (1) of this subsection, the Mayor may request Council approval of the provision of goods or services without benefit of a contract in order to prevent an interruption of city services. If no member of the Council files an objection within 14 days, . . . , the agreement shall be deemed approved. If an objection to the request is filed by a Councilmember within 14 days, the Council may disapprove the request by resolution, within 30 days, . . . , of submission of the contract to the Council. The request shall be deemed approved if the Council does not disapprove the request within the 30 days.

D.C. Law 8-258, § 2(b), 38 D.C. Reg. 974 (Mar. 8, 1991) (formerly codified at D.C. Code § 1-1181.5(d)(1)-(2)). At the same time, the Council also enacted legislation adding D.C. Code § 1-1181.5a, which requires Council approval of any contract for goods and services worth over \$1,000,000. D.C. Law 8-257, § 3, 38 D.C. Reg. 969 (Mar. 8, 1991). Although these legislative responses came after the events involving Pitts had ended, they confirm the PPA scheme set forth in D.C. Code § 1-1182.5(d)(2) for reimbursing an innocent contractor for its reasonable, actual performance costs incurred without the benefit of a valid contract.

As there was no valid contract, Appellant's arguments concerning a breach of contract, illegal termination of a contract, and termination for convenience are inapposite.

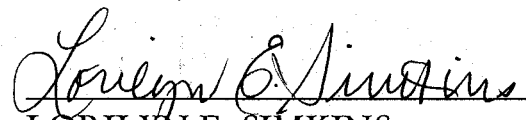
Although Pitts and DHS never entered into a new contract on or after October 1, 1986, and there was no substantial compliance with the provisions of the PPA, DHS continued to receive the shelter and related services from Pitts and to pay Pitts for those services. Even if it were possible for Pitts to argue that it had a good faith (though mistaken) belief that it had a contract with the District to provide the services during the period in question, section 1-1182.5(d)(2) would limit Pitts' compensation to its reasonable costs actually incurred. *S.W. Imaging, Inc.*, CAB No. D-806, Jan. 23, 1992, 39 D.C. Reg. 4393, 4398.

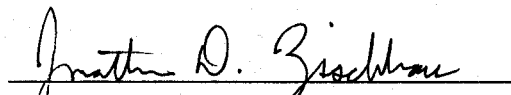
In this matter, the Trustee appeals the denial of a claim for additional payment in the amount of \$753,679.48 for the period from January through July 1990, over and above the \$1,573,215.24 which Pitts has already been paid. Payment to Pitts was based

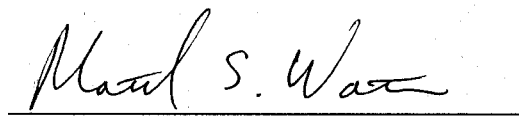
on payment of \$42.85 per night for each room occupied, and \$12.48 per person per day for meals actually served as estimated from sample counts made by DHS, plus \$15 per square foot per year for clinic and office space occupied. Those amounts, having been previously negotiated between the parties, do not appear to be an unreasonable estimate of the cost of performance. In the absence of a written contract, to be entitled to any additional payment, Appellant bears the burden of demonstrating that Pitts' actual costs during the period for which the claim was made exceed the amount paid. Appellant has supplied the Board with no supporting documentation with regard to such costs. Accordingly, it has failed to meet its burden of proof.

In sum, Appellant has failed to prove that any further payment is due and owing. Appellant's claim is therefore denied.

DATE: August 13, 1999


LORILYN E. SIMKINS
Chief Administrative Judge


JONATHAN D. ZISCHKAU
Administrative Judge


MATTHEW S. WATSON
Administrative Judge