

IMPLIED IN FACT CONTRACTS-UNJUST ENRICHMENT AND QUANTUM MERUIT

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If you were a health care contractor providing emergency room health care services to a rural hospital, and your government contract ended, would you continue to provide those services despite the fact that the Contracting Officer refused to pay more than \$8 million for your submitted and undisputed invoices over a period of 7 months? Tribal Health, LLC (“Tribal”) did so at the Pine Ridge Indian Hospital in order to ensure continued emergency room services because it was the only vendor qualified and capable of performing this important work. When Tribal’s contract officially ended, the contracting officer directed Tribal to perform without an express written contract, because the services provided vital patient care. *Tribal Health, LLC v. Department of Health and Human Services*, CBCA 8431, July 25, 2025. Read on for the result.

Prior to July 2024, Tribal had been providing emergency management and staffing services under a contract that expired on June 30, 2024. After a competitive recompetes, the Indian Health Service (“IHS,” an agency within the Dept. of Health and Human Services), issued two new indefinite quantity contracts, one to Prime Physicians PLLC (“Prime”) and one to Tribal. But Prime could not meet the required credentialing and privileging requirements of its contract, therefore, IHS on July 2, 2024 awarded Tribal a bridge contract to continue providing the emergency services. The bridge contract was for the period July 1, 2024 through Sept. 30, 2024, and included both FAR 52.217-8 (Option to Extend services for up to six months) and FAR 52.217-9 (Option to extend the term of the contract, including any option periods, for up to one year—ending July 1, 2025).

Prime filed a bid protest of the award to Tribal at the Government Accountability Office, and in order to take corrective action, IHS exercised an option to extend Tribal’s bridge contract through Dec. 31, 2024. Prime protested at the Court of Federal Claims, but the protest was dismissed on Nov. 27, 2024. In December, IHS wanted to issue a new solicitation, but sought to issue a *new* bridge contract to Tribal (from Jan. 1 to March 31, 2025, with two options). Note: there was still an option period of six months in Tribal’s *existing* bridge contract that IHS could have exercised. But on Dec. 31, 2024, with less than six hours remaining in the first bridge contract, and without providing the required notice of intention to exercise the option, IHS sent Tribal a Notice to Proceed (“NTP”) from Jan 1, 2025 to March 31, 2025. The NTP identified a lower price for the required services than the price in the existing bridge contract.

In order to ensure there was no gap in patient care services, Tribal continued to perform, and its invoices were approved by the contracting officer’s representative (“COR”) but IHS paid none of them. On March 4, 2025, IHS sent Tribal an “Award Notice” for a letter contract with a retroactive effective date of Jan. 1, 2025—but at lower rates than those contained in the existing (now expired) bridge contract. On March 7, 2025, after payment on its invoices continued to be withheld, Tribal submitted a certified claim for all of its invoices plus required interest under the Prompt Payment Act. Tribal *never* signed the letter contract, but continued to work, and IHS never issued a final decision on Tribal’s claim. Tribal then appealed to the Board of Contract Appeals for payment of its invoices for services since Jan.1, 2025 for \$7 million. IHS had paid none of Tribal’s invoices, even though it had never rejected any of them. Tribal sought an immediate summary judgment on its claim.

The Board ruled that IHS's proffered "letter contract" was ineffective and not binding on Tribal. It was procedurally defective, and Tribal health never agreed to it. The letter contract expressly provided that it required Tribal's signature and return to the contracting officer—but Tribal did not sign the letter contract and expressly rejected IHS's offer of a letter contract.

The Board further ruled that the bridge contract was not in effect after Dec. 31, 2024 because the government failed to provide the 30 days notice to Tribal required for the option exercise and because the bridge contract changed the dollar amount of the option period.

The result was the Board concluded that Tribal never agreed to the letter contract, there was no valid exercise of the option to extend the bridge contract beyond Dec. 31, 2024, and there was a contractor that had been performing millions of dollars in essential services since Jan. 1, 2025 without a contract in place. The Board held that the government could not receive the benefits of the work and refuse to pay for them, and under these circumstances where there was no contract in existence, an implied contract arose that required IHS to pay "reasonable compensation." The Board concluded that "an implied-in-fact contract allowing for recovery in *quantum meruit* had arisen because the government bargained for, agreed to pay for and accepted services from Tribal."

The Board further found that absent performance by Tribal, IHS could not have obtained emergency services at Pine Ridge after Dec. 31, 2024 because Tribal was the only source qualified and capable of performing the work, and IHS had no other option than to hire Tribal. The only contract vehicle that the agency had available to it was the IHS bridge contract—at the bridge contract's prices, and Tribal was entitled to *quantum meruit* compensation consistent with that bridge contract's price schedule. The Board held that Tribal was entitled to receive bridge contract rates, and was therefore not obligated to prove its costs (IHS had demanded submission of certified cost or pricing data prior to issuing payment).

Takeaway. Tribal could have stopped all performance on Dec. 31, 2024 when its bridge contract ended. However, it sought to provide vital services which could not be provided by any other company, and continued to provide them even when its invoices were accepted but not paid. The only thing that can be said about this situation is that IHS failed to perform its required contractual actions, but Tribal essentially "bailed out" the government and provided the essential and vital services, because of the severe consequences that would have resulted for patients at the rural hospital at issue if Tribal had refused to perform without a contract, which it could have done. Contracting officers in every agency must perform their work to ensure *proper and contractually binding vital services in a timely manner*. IHS failed on this account, but Tribal eventually received a Board decision that rectified this unfortunate situation.

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