

Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

PR

**Matter of:** U.S. Customs Service--Claim of the Port Authority of New York and New Jersey  
**File:** B-249075  
**Date:** September 16, 1992

## DIGEST

The Port Authority of New York and New Jersey may be paid on a quantum meruit basis for the Customs Service's use of real property without a written lease, since Customs could properly have acquired a lease, it received and accepted the benefit of the use of the real property, the Port Authority acted in good faith, and the amounts claimed represent the reasonable value of the rent.

## DECISION

The United States Customs Service requests authorization to pay the claimant, the Port Authority of New York and New Jersey, for rent payments in the amount of \$26,705 per month for the months of October 1990 through August 31, 1992, for space occupied in Building 88 at John F. Kennedy International Airport, Jamaica, New York.<sup>1</sup> For the reasons indicated below, we conclude that the Port Authority is entitled to recover the amounts claimed on a quantum meruit basis.

## BACKGROUND

Until 1986, all personnel of the U.S. Customs Service at Kennedy were housed in Building 80. In 1986, the General Services Administration (GSA) and the Port Authority concluded negotiations for new space for Customs. The only available space at the airport was Building 178. However, the building could not house all Customs personnel, so Customs asked GSA to retain space in Building 80 for the Contraband Enforcement Team (CET), the firearms unit, and warehouse storage.

In addition, GSA sought to obtain space for Customs in Building 88 from Hudson General Corporation, which leased that building from the Port Authority for a Centralized Container Examination Facility. When Hudson General

<sup>1</sup>Our Claims Group, General Government Division, forwarded its Claim No. Z-2867819 to this Office.

OS 7602/199572

terminated its lease in January 1988, GSA attempted to lease Building 88 for Customs. It also verbally delegated to Customs authority to lease Building 88 from the Port Authority on an emergency temporary basis until it could secure a permanent lease. Under this authority Customs occupied Building 88 in January 1988. Later, GSA advised Customs that it had not been able to acquire a lease agreement with the Port Authority and GSA granted a written delegation of authority to Customs to contract directly with the Port Authority.

All attempts by Customs to negotiate a lease for Building 88 failed. Customs' Assistant Chief Counsel objected to clauses in Port Authority's form permit, such as unlimited contingent liability; and the Port Authority refused to sign the government lease containing the mandated clauses on undue influence and drug-free work environment. Customs could not vacate the space because there was nowhere else to move on or near the airport that would meet Customs' requirements. Customs expected to vacate Building 88 and move into newly constructed quarters by August 31, 1992. It has not paid the Port Authority for the period after October 1, 1990.

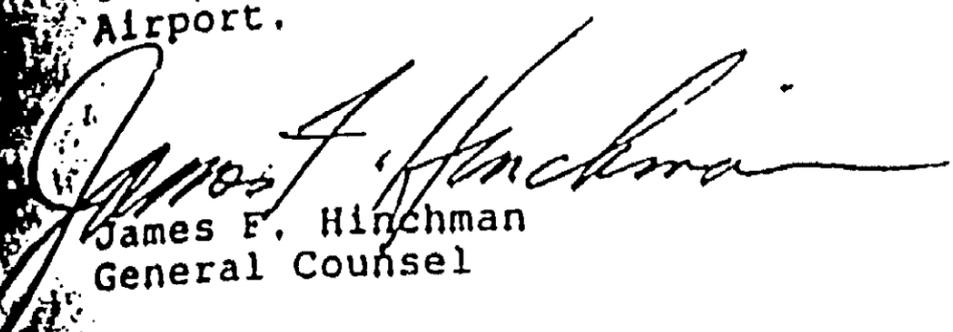
#### OPINION

Under this Office's claims settlement authority, 31 U.S.C. § 3702, the Comptroller General may authorize reimbursement to a contractor on a quantum meruit basis when certain conditions are met... 64 Comp. Gen. 727, 728 (1985). First, there must be a threshold determination that obtaining the goods or services for which payment is sought would have been a permissible procurement had the proper procedures been followed. Second, the government must have received and adopted a benefit. Third, the entity seeking payment must have acted in good faith. And fourth, the amount to be paid must not exceed the reasonable value of the benefit received. 69 Comp. Gen. 13, 14-15 (1989).

We find that all of these criteria are satisfied in this case. (1) As to the threshold issue, Customs received the proper delegation from the GSA to negotiate directly with the Port Authority for a lease for Building 88; therefore, obtaining the lease would have been a permissible procurement. (2) We find that Customs received and adopted a benefit since Customs admits that it occupied Building 88 from October 1990 without paying Port Authority. (3) In addition, there are sufficient grounds to conclude that the Port Authority was acting in good faith. The Port Authority has been providing building space to Customs for a number of years. For technical reasons, the two parties failed to reach agreement on an acceptable lease for Building 88. (4) Finally, we find that the rental rate of \$26,705 per month

does not exceed the reasonable value of the benefit received since Customs recommends that the claim be paid in that amount and there is no allegation that this is not the going rate for building space at JFK International Airport.

Accordingly, we authorize payment by the U.S. Customs Service to the Port Authority of New York and New Jersey for rent payments in the amount of \$26,750 per month for the months of October 1990 through August 31, 1992, for space occupied in Building 88 at the John F. Kennedy International Airport.



James F. Hinchman  
General Counsel