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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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Piercy & Rogers  
Law Offices  
126 Post Street, Suite 600  
San Francisco, California 94108

Attention: Mr. William D. Piercy

Gentlemen:

Further reference is made to your letter of February 24, 1966, requesting reconsideration by this Office of the claim of Mr. [redacted], claim No. 22-305-307, which was disallowed by settlement certificate dated February 9, 1966.

Mr. [redacted] claim is in the amount of \$64.01 for increased costs alleged to be due because of the Government's delay in making part of the work site available for work under Army contract No. DA 04-142 AVI-2999. The contract in question was for carpentry, plumbing and electrical work incident to Government installation of dental equipment at Letterman General Hospital, San Francisco, California. At the preconstruction conference held on June 23, 1965, it was explained to Mr. [redacted] that it would be necessary to move intensive care patients from part of the work area before work could be commenced in that area. It was agreed that work be started in the room to be occupied by the intensive care patients after their move, so that it would only be necessary to move them once. Because a door and door frame were required for that room and because measurements were necessary before the door and frame could be ordered, it was also agreed that Mr. [redacted] would make the measurements immediately and that the notice to proceed would not be issued until June 30, 1965, instead of June 23, as originally planned, in order to provide time for delivery of the door and frame. Work was begun on June 30, as scheduled, but because the door and frame mentioned above had not yet been delivered, Mr. [redacted] carpentry foreman had completed all work preparatory to installation of the door and frame by 2:30 p.m. in the initial room, and could not proceed to the next scheduled room as it was still occupied by intensive care patients. Mr. [redacted] then called the contracting officer and

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requested the removal of the intensive care patients, which was accomplished by the afternoon of July 1. Mr. [redacted] carpentry foreman was not able to work for 2 hours on June 30, and 5½ hours on July 1, for which time he was paid \$64.01 by Mr. [redacted].

You contend that the delay was caused by "unexpected and unusual conditions at the jobsite" and is therefore compensable under article 1, Changes and Changed Conditions, of the General Provisions of the contract. You also dispute the conclusion stated in the settlement certificate that Mr. [redacted] did not make a timely appeal from the contracting officer's decision, and you request an explanation of the reference in the next-to-last paragraph of the settlement certificate to "Article 15."

Upon review of the file submitted to this Office by the Army, we find that Mr. [redacted] did make a timely appeal from the contracting officer's decision, and we therefore conclude that the contracting officer's decision was not "final and conclusive as to the facts," as stated in the settlement certificate. The next-to-last paragraph of the settlement certificate discussed the provisions of the Disputes clause, and the reference to article 15 was in error. The reference should have been to article 3.

However, we do not agree with your contention that a temporary unavailability of the jobsite such as the one encountered in this case constitutes an unknown unusual physical condition of the type contemplated by the Changes and Changed Conditions clause of the contract. Even if it is assumed that the delay in this case was covered by that clause, there is no way to authorize payment of Mr. [redacted] claim as it is well settled that, in the case of delays by the Government caused by changes or changed conditions, the contractor is entitled only to time extensions for performance, and that increases in the contract price are only authorized in cases where additional work is performed. See United States v. Rice, 317 U.S. 61. While Mr. [redacted] therefore would have been entitled to a time extension if it was determined that the delay in question was covered under the Changes and Changed Conditions clause, none was necessary as the contract was completed on time. He would not, however, have been entitled to an increase in the contract price as no additional work was performed for which compensation was not made.

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In cases where the Government caused delay is so unreasonable that it amounts to a breach of the contract, damages may be awarded for the breach. However, we agree with the determination of the contracting officer that the delay in this case was not unreasonable. The delay comprised only 7½ hours of the total contract time of 44 days. There was no way for the contracting officer to foresee the necessity of moving the intensive care patients before completion of the initial room as it was assumed when the agreement was reached to begin work on June 30, that the door and frame necessary for completion of the work in that room would be delivered in time to be installed at the same time that the preparatory work was done. Once the request for removal of the intensive care patients was made, however, the removal was accomplished as quickly as possible. We therefore conclude that the delay did not constitute a breach of the contract, and that since there was no breach, no damages are allowable.

Accordingly, the settlement certificate of February 9, 1966, must be sustained.

Very truly yours,

FRANK H. WEITZEL

*Assistant* Comptroller General  
of the United States