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DECISION



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

FILE: B-210833

DATE: August 4, 1983

MATTER OF: Request for Advance Decision from
Assistant Comptroller of the Army for
Finance and Accounting

DIGEST:

1. A written memorandum of conversation between the Rhode Island State Operation and Maintenance Supervisor and contractor concerning amount of equipment to be used in connection with snow removal contract is not a part of contract, but memorandum does serve purpose of a guide as to what State expected in way of snow removal equipment.
2. Where Base Civil Engineer, who was supervising snow removal contract between State of Rhode Island and contractor, was of view that contractor did not furnish sufficient amount of snow removal equipment to perform contract, GAO concludes that this was a reasonable view. However, since contract was terminated for convenience, GAO would not object to the State paying contractor reasonable value for work performed.

The Finance Corps Executive, Assistant Comptroller of the Army for Finance and Accounting, Indianapolis, Indiana (Army), requests an advance decision in connection with a request for reimbursement under Rhode Island Air National Guard Operations Maintenance (O&M) Agreement No. DAHA-37-82-H-0003, for snow removal services rendered at the Air National Guard (ANG) Base, Quonset State Airport, North Kingstown, Rhode Island.

Under the above agreement, between the National Guard Bureau and the State of Rhode Island, the Federal Government was authorized to reimburse the State of Rhode Island for 75 percent of the expenses incurred in rendering necessary services and maintenance of certain ANG facilities, including the above facility. The agreement further stated that the State may contract for the services to be procured and that each contract shall include certain policy clauses contained in the Defense Acquisition Regulation (DAR).

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The State of Rhode Island entered into a contract (purchase order No. 86738) with the Salo Construction Company (Salo) in May 1981, for snow removal at the ANG Base, Quonset State Airport. The purchase order provided that the snow removal services for the period July 1, 1981, through June 30, 1982, were to be performed in strict conformance with the attached specifications and that the successful bidder would be required to comply with applicable provisions of DAR. The total price of the purchase order was not to exceed \$40,000 and the order provided for payment of \$4,900 per snowfall up to 6 inches. The purchase order provided that snow removal should be started and completed as soon as possible in order not to hinder mission accomplishment. There was no provision covering snowfall in excess of 6 inches. The Army has forwarded a voucher in the amount of \$7,350 covering charges for two snowfalls (\$9,800 less 25-percent contribution from Rhode Island).

Paragraph 7 of the specifications provided that all work was to be performed under the direction of the Base Civil Engineer (BCE) or his assistant and would be subject to his acceptance. Paragraph 5 provided that all items necessary to obtain snow removal shall be included as part of the job. Also, paragraph 3 of the specifications provided that "all work will be accomplished upon notification by the BCE (usually when a forecasted snowfall is predicted of over 2 inches) and response time to start snow removal after notification will be a maximum of two hours." Finally, paragraph "K" provided that the contract would be terminated at the convenience of the Government when the service is no longer required.

In addition, the BCE received a memorandum dated November 30, 1981, from Mr. Donal Sullivan, of the State O&M Office. This memorandum, entitled "Snow Removal," was purported to be a confirmation of a discussion between Mr. Sullivan and the president of Salo, in which an agreement was supposedly reached concerning the amount of equipment to be used for snow removal. The memorandum provided that "Salo Construction will move four (4) dump trucks and one (1) end loader onto site upon State Snow Alert--will not wait for snowfall to accumulate."

Late in the afternoon of January 13, 1982, snow began to fall on the base. At 9 p.m., because more than 2 inches had accumulated, the Civil Engineer's Office called Salo. The Civil Engineer's Office requested that the snow removal equipment designated in Mr. Sullivan's memorandum be brought to the site. At 11 p.m., a small dump truck with a plow arrived at the base and proceeded with the snow removal operation. Prior to the arrival of the dump truck, ANG equipment had started snow removal. A second dump truck

with a plow arrived at the base at 6 a.m., January 14, 1982. Both trucks remained until 5 p.m., January 14. All during this period, ANG equipment continued to be used for snow removal. ANG equipment was, according to the BCE, used because of urgent mission requirements for scheduled transportation of troops to Arizona.

Late January 14, 1982, a second storm occurred. At 3:18 a.m., on January 15, 1982, Salo's first vehicle for the second storm arrived, a small dump truck with a plow. A second truck with a plow arrived at 6:35 a.m., the same morning. The BCE complained that at no time during this period was any of the snow removed from the area since the front-end loader had never been brought to the site. On the same morning, the BCE called the president of Salo and advised him that unless he had all of the necessary equipment required by Mr. Sullivan's memorandum at the base by 11 a.m., January 15, 1982, he (the BCE) would have all of Salo's vehicles removed from the base. The equipment did not arrive at the prescribed time and the BCE requested Salo's drivers to leave the base.

Subsequently, Salo was informed that (1) it had not provided adequate vehicles to properly conduct the snow removal operations, (2) it had not responded in accordance with the specifications, (3) its efforts to remove snow were not, as required by the specifications, being accomplished in a manner rapid enough to allow mission schedules to be fulfilled, and (4) the agreement with Salo would be terminated for convenience of the Government since Salo's minimal service was not required.

The BCE is of the view that Salo should only be paid for the man-truck hours expended on the site during the period January 13-15, 1982 (40.75 hours at \$41 per hour). Thus, according to the BCE, Salo should only receive \$1,670.75. On the other hand, the State appears to recommend payment of the claim as submitted.

It appears that the BCE views the memorandum of November 30, 1981, as part of the contract even though it was not signed by Mr. Salo and Mr. Salo denies that he agreed to the use of the amount of equipment set forth in the memorandum. We are of the view that the memorandum is not a part of the snow removal contract and is, at the most, a written confirmation of what Mr. Sullivan, of the State O&M Office, conceived to have been agreed to during his conversation with Mr. Wayne Salo. See Williston, Contracts, section 632A (Third Ed.). However, the memorandum does serve the purpose of a guide as to what the O&M Office

considered to be an adequate amount of snow removal equipment.

In this regard, the BCE was of the view that Salo had not provided an adequate number of vehicles to properly conduct the snow removal operations. In view of the memorandum and the fact that the contract provided for acceptance of the work by the BCE we believe that this is a reasonable view. Therefore, the voucher is not for payment. However, we do not object to payment on the basis proposed by BCE of \$1,670.75, since the contract provided that it would be terminated for convenience. We think that the BCE did terminate the contract for convenience and that \$1,670.75 represents a reasonable cost of the termination.

for 
Comptroller General
of the United States