

V. 17/11/1984
P.R.I
29763

DECISION



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

FILE: B-210833

DATE: November 9, 1984

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

DIGEST:

State may be reimbursed for payment to contractor pursuant to National Guard agreement in settlement of claim where state reasonably concludes that settlement was justified. Prior decision is modified.

The Army requests reconsideration of our decision Request for Advance Decision from Assistant Comptroller of the Army for Finance and Accounting, B-210833, Aug. 4, 1983, 83-2 C.P.D. ¶ 170. In that decision, we held that a voucher in the amount of \$7,350, covering the amount the state of Rhode Island claimed from the federal government as reimbursement for termination of a snow removal contract at the Air National Guard (ANG) Base, Quonset State Airport, North Kingstown, Rhode Island, was not for payment.

Under Rhode Island ANG Operations and Maintenance (O&M) Agreement No. DAHA-37-82-H-0003, 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. Section 7 of the agreement authorized the state to contract for the above services, subject to approval by the United States Property and Fiscal Office (USPFO). Pursuant to this provision, the state of Rhode Island contracted with the Salo Construction Co. (Salo) to have the snow removed. This contract was approved by the USPFO as evidenced by payment to Salo for snow removal in December 1981, made pursuant to sections 3 and 7 of the agreement. These two sections provide that payment under section 3 of the agreement constitutes approval of the payment as an authorized charge against the agreement and, in essence, approval of the agreement. Our decision held that the contractor was only entitled to be paid for the work actually performed, valued at \$1,670.75.

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We modify our decision.

At the time of the initial decision, we assumed that Salo's claim had not been paid yet by the state. In fact, the state had, pursuant to legal advice from both the Rhode Island ANG Staff Judge Advocate and legal counsel for the state of Rhode Island, paid Salo the amount of \$9,800 in settlement for terminating the contract.

The crux of the request for reconsideration is that since payment was made to Salo prior to our decision by a state official who had the legal authority to make such payment and the payment represented a reasonable expense incurred by the state, the state is entitled to reimbursement under the O&M agreement. The state argues, in essence, that because Salo's contract was terminated, the state faced a possible breach of contract suit under which Salo may have recovered the full contract price (\$40,000) and, therefore, settlement of the claim with Salo was a reasonable alternative to the risk of litigation. We are unable to conclude that such action was unreasonable under the circumstances. The voucher may be paid in the amount of \$7,350, as submitted.

Milton J. Fowler
for Comptroller General
of the United States

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