The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Claim of Manchester Airport Authority for Reimbursement of Oil Spill Clean-up Expenses

File: B-221604

Date: March 16, 1987

DIGEST

Airport Authority that contracted and paid for services to halt and clean up an oil spill on Army property may be paid on quantum meruit basis because services constituted a permissible procurement at a fair price which the Government would otherwise have had to provide itself and for which the Army received a benefit.

DECISION

The Manchester Airport Authority (MAA), City of Manchester, New Hampshire, seeks reimbursement from the Department of the Army for $10,795.96 for services provided in cleaning up an oil spill. The Army forwarded the claim to GAO for settlement as a doubtful claim.[1]/ In its administrative report, the Army recommended favorable consideration of the claim because:

> "* * * the U.S. Army did receive benefit of the service and would have had to contract for the clean-up if Manchester Airport Authority had not done so."

Based on our review of the documents submitted, it is our conclusion that the MAA may be paid on a quantum meruit basis.

FACTS

This claim arose from clean-up services paid for by the MAA of an oil spill that occurred on the grounds of the U.S. Army Reserve Center at Grenier Field in Manchester, New Hampshire, in 1982. It appears that following several weeks of heavy

1/ GAO Policy and Procedures Manual for Guidance of Federal Agencies, title 4, ⅋ 5.1.

rains, a storm drainage sewer near an Army building on the Reserve Center grounds, adjacent to MAA land, backed up, overflowed on the grass surrounding the drain, and left a residue of oil. Upon discovering the spill, the Army initially contracted with a commercial oil clean-up crew to pump the oil from the drain and to locate an apparent blockage in the pipes which it assumed was the cause of the spill. The contractor advised the Army that the problem was greater than first anticipated because oil continued to flow from the storm sewer. The Army ordered work stopped on the contract and paid $1,673 to the private contractor for the unsuccessful clean-up attempt.

On June 4, the Army contacted the MAA and State water pollution officials and asked their assistance in locating the source of the oil contamination. It requested, in addition, help in locating the original plans of the drainage system, since it was suspected that the major source of the contamination could be from the abutting airport land and buildings. All of the land occupied by the airport and the Army Reserve Center had originally been owned by the Air Force, which had transferred part of it to the Army and sold the rest to the MAA. The MAA studied the drainage system, using old Air Force plans it had located, and identified one or more possible sources of the problem: 1) the basement of Precision Airlines, Inc., an airport lessee of the MAA; 2) underground storage tanks next to Precision's building; and/or 3) an Army motor vehicle maintenance building.

A few days later, MAA retained a private company, Jet-Line Services, to investigate the problem and perform necessary clean-up services. Jet-Line worked over a 2-week period and was able to successfully clean the drainage system and stop the oil flow from causing additional pollution on adjacent property. Jet-Line billed the MAA for $23,091.91, which MAA was able to reduce to $21,591.91 by taking advantage of a prompt payment discount. MAA at first attempted to bill the Army for the full amount it had paid, but, upon the Army's refusal, agreed to reduce its claim to $10,795.96 and to pursue Precision for the remaining half.

It appears to be the Army's contention that Precision was the principal source of the contamination, as there was evidence of deliberate dumping of oil through a floor drain in Precision's boiler room. The MAA has suggested that the spill was caused by the Army's lack of maintenance of the drainage system, and that the oil was from "years of residue

collected in an oil trap built by the Air Force and turned over to the Army without direction."[2]/

DISCUSSION

As the Army's administrative report points out, there are three possible grounds on which MAA's claim can be considered -- tort, contract, or quantum meruit. In August 1982, MAA did file a claim with the Army under the Federal Tort Claims Act, which the Army denied in 1983. MAA did not file suit within the time period prescribed by law. Hence, the Army's denial is final and conclusive, and the tort theory may not be considered further.

It is undisputed that there was no formal contract between the Army and the MAA for the clean-up services. The Army considered whether it could apply its authority under applicable procurement regulations to ratify unauthorized commitments, but found that there had been no commitment by Army personnel to reimburse MAA. This also is a determination that is solely within the Army's jurisdiction to make.

Hence, the only remaining theory for us to consider is payment on the basis of quantum meruit. In applying this theory, it is not necessary for us to determine the exact cause of the contamination, because the doctrine is based not upon legal liability but upon the equitable concept of unjust enrichment. In 62 Comp. Gen. 337 (1983), for example, we recognized that even when goods or services are provided under a void contract:

> "* * * the Government is obliged to pay the reasonable value of the goods or services on an implied contract for quantum meruit or quantum valebat." Id., at 338-39.

In 64 Comp. Gen. 727, 728 (1985), we stated the test for quantum meruit recovery as follows:

> "We must first make a threshold determination that the goods or services would have been a permissible procurement had the formal procedures been followed. * * *

---

[2]/ Letter to GAO from City of Manchester Department of Aviation, May 31, 1985.

"Next we must find that the Government received and accepted the benefit, the persons seeking payment acted in good faith, and the amount claimed represents the reasonable value of the benefit received."

In that case, a telephone company, at its own initiative and without the knowledge of the Government, installed an emergency, auxiliary generator to restore telephone service during a power failure at a missile testing site. Here the Army not only had knowledge of the service provided by the MAA but it initiated the request for assistance and, according to the airport manager, gave conflicting information as to its willingness to pay for the service.

There is no question that the Army could have contracted for the oil clean-up services itself. The entire oil spill occurred on Army property even though it may have been at least partially caused by actions taken on adjacent property. The Army officials contracted and paid for initial clean-up efforts, and sought assistance from the MAA and State officials only when this attempt failed.

There is also no question that the Army received a benefit. This is evidenced by the statement in the administrative report that the Army would have had to contract for the services if the MAA had not done so. The good faith of the MAA in this matter has not been questioned. Work was begun under an emergency situation when all parties feared that failure to find the source of the oil spill and correct it could lead to serious contamination of adjacent land and water. Furthermore, by its prompt payment of Jet-Line's bill, the MAA was able to reduce the parties' cost through the substantial discount that was offered.

Finally, an official at the Army's Environmental and Energy Management Office at Fort Devens has stated that the cost of the services appeared to be "reasonable" and "competitively priced."[3/] We therefore accept the amount claimed as the reasonable value of the benefit Army received.

In view of the foregoing, we conclude that the standards for quantum meruit recovery have been met. The Army may therefore pay the MAA's claim in the amount of $10,795.96.

Milton J. Socolar

for Comptroller General
of the United States

3/ Memorandum by Robert Nicoloro to Contracting Division, Fort Devens, Mass., July 18, 1984.