



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

CLAIMS DIVISION

IN REPLY PLEASE QUOTE

SEP 14 1964

FA-2-3268981-CJW-1

The Comptroller General

Herewith is the file relative to the claim of James H. Michael and Charles P. Howard, lessors, for \$18,129.66, for costs of alterations made to premises leased by them to the Government under lease No. GS-068-5102, as amended.

The lease was entered into on May 23, 1958, by the General Services Administration, Public Buildings Services, and the lessors. Six supplemental agreements were thereafter executed amending or modifying the lease, which involve the rental period, rate, and to provide additional electric current, as well as for alterations and changes in office partitions which items are not included in the present claim.

Memorandum dated January 8, 1964, from the Regional Counsel, General Services Administration, Region 6, Kansas City, Missouri, to the Acting Director of Regional Data & Financial Management - GBC, indicates that certain alterations in the leased space were requested by the tenant agency of the lessor without the knowledge or consent of General Services Administration. The memorandum also states the work was completed and payment was requested before GSA had knowledge of the requirement and inspected the work, none of which was the responsibility of the lessor(s) under the lease. The file fails to show that detailed specifications were prepared in advance and that any bids were solicited from other firms. However, it does appear that the alterations definitely were required by the Agricultural Research Service, as tenant agency, due to a pending reorganization which, in turn, required adequate and suitable offices for an increased number of personnel.

Established procedures were not complied with by the Agricultural Research Service in requesting the lessors to furnish the alterations here involved, since it is the function of General Services Administration to do so under the authority of Reorganization Plan No. 18 of 1950 (15 P. R. 3177, 64 Stat. 1270, 5 U.S.C. 1332-15). See 38 Comp. Gen. 803, 805 (B-139595). However, all wance of proper costs of the alterations made is proposed by both the Agricultural

Research Service and General Services Administration on a quantum meruit basis. Claim invoice of June 12, 1963, lists only the types of work completed, amounting to \$16,481.51, to which a "contracting charge" of \$1,648.15 has been added to total the \$18,129.66 claimed. In an effort to arrive at the proper allowable costs, the Regional Design and Construction Division, GSA, has prepared a cost estimate based upon an inspection and an audit of costs, and recommends allowance of \$16,271.60. See memorandum dated April 1, 1964, and Exhibit "A" from the Audit Manager, Audit Division (2000), General Services Administration, which excepts the contracting charge of \$1,648.15.

Since the alterations were made at the direct request of the tenant agency without regard to Reorganization Plan No. 10 of 1950, and without the prior knowledge or consent of General Services Administration, question arises as to whether payment may be made of the sum of \$16,481.51, as administratively recommended, on a quantum meruit basis.

Instructions are requested.

Chief, Payment Claims Branch

Enclosures

FILE COPY - COMP GEN

Indorsement

B-155200-O.M.

FILE COPY - COMP GEN

November 24, 1964

Director, Claims Division

Returned. In the letter of July 17, 1964, from the Chief, Accounting and Reports Division, transmitting the claim for settlement payment of the claim is recommended in an amount not less than \$16,271 but the view is expressed that payment of \$16,481.51 representing the actual costs listed by the claimants is justified. Doubt is expressed, however, as to the propriety of payment of the 10 percent "Contracting charge" of \$1,648.15 because of the possible cost-plus-a-percentage-of-cost prohibition (41 U.S.C. 254b).

B-159200-0.H.

Since the work, performed without prior authorization by General Services Administration in contravention of the rule stated in 32 Comp. Gen. 342 and 33 Id. 803, was necessary from the Government standpoint and since the Government accepted the benefits of the work the claimants are entitled to payment on a quantum meruit basis for the reasonable value of the work. 38 Comp. Gen. 30. On such basis the 10 percent "Contracting charge" may not be regarded as in contravention of the DFPC prohibition since there was no prior agreement to pay such a charge. B-145339, May 31, 1961.

Accordingly, and since General Services in its letter of November 10, 1954, attached, has found the 10 percent "Contracting charge" as reasonable and has recommended settlement on that basis, allowance of the claim is authorized in the amount of \$18,129.66 as full and final settlement, and conditioned upon claimants' waiver of restoration rights in accordance with lessors' itemized claim.

FRANK H. WEITZEL

Assistant Comptroller General
of the United States

Attachments