



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Combination Industries, Inc.

File: B-271163

Date: May 22, 1996

DIGEST

A claim against the Federal Aviation Administration (FAA) for operating an advisory radio system at an airport during a 4-month period before the FAA entered into an agreement with the claimant to provide the service, may be paid on a quantum meruit/quantum valebant basis, since the FAA had a statutory duty to operate such a system at the airport, and the airport, which had been paying the claimant for providing the service previously, had terminated its agreement to do so.

DECISION

Robert Doyle on behalf of Combination Industries, Inc., requests payment of \$6,044.40, from the Federal Aviation Administration (FAA) for operating the Unicom advisory radio system at the Marquette County Airport, Michigan, for the period January-April 1995. The claim may be paid.

BACKGROUND

Combination had two separate contracts for services at the Airport when the events leading to its claim arose, one with the FAA to provide auxiliary weather observation services at the Airport, and one with the Marquette County Airport to provide Unicom services. On February 12, 1994, Public Law 103-211, section 409, was enacted, which required FAA to establish and operate an Auxiliary Flight Service Station (AFSS) at the Marquette County Airport no later than September 1, 1994. FAA subsequently decided that it could meet its statutory obligation by including the Unicom services being provided by Combination under its contract with the Airport into its existing contract with that firm for auxiliary weather observation services.

The facts concerning the effective date of the FAA's agreement to take over the cost of providing Unicom services at the Airport are disputed. According to the

Airport, an agreement was reached late in 1994 between the FAA and the Airport for the FAA to take over the cost of these services starting January 1, 1995. However, for various reasons the FAA did not formally incorporate the change into its contract until May 1, 1995. Combination has submitted a letter dated June 27, 1995, received from the Marquette County Airport, responding to its request for payment for the first 4 months of 1995. The letter advises Combination, confirming for the first time in writing the content of previous telephone conversations, that it had terminated its obligation to pay for operating the Unicom system on January 1, 1995, and states that it did so because it understood that the FAA had assumed responsibility for payment as of that date.

The FAA, for its part, denies that any of its officials were authorized to agree to assume the cost of Unicom services at the Airport any earlier than May 1, 1995. FAA notes in this regard that the contract between the Airport and Combination was not formally terminated until Combination received the June 27 letter from the Airport.

OPINION

Clearly, Combination had no contract to provide Unicom services to the FAA before May 1, 1995. Nonetheless, under the doctrines of quantum meruit and quantum valebant, the government is liable for the value of what it has received from a contractor even in the absence of a binding contract. Prestex Inc. v. United States, 320 F.2d 367, 373 (Ct. Cl. 1963); Mohawk Data Science Corporation, 69 Comp. Gen. 13 (1989). The criteria for payment under these doctrines consist of the following four elements. First, the goods or services for which payment is sought would have been a permissible procurement had the proper procedures been followed. Second, the government must have received and accepted a benefit. Third, the claimant must have acted in good faith. Fourth, the amount to be paid must not exceed the reasonable value of the benefit received. 69 Comp. Gen. at 14-15.

The third and fourth elements of a quantum meruit and quantum valebant claim are clearly met here. There is no question but that Combination performed its services in good faith. The FAA does not suggest otherwise. As to the value of its services, when Combination's services were incorporated into the FAA contract on May 1, Combination received an additional amount of \$2,400.00 per month; its claim for the preceding 4 months is based on a figure of only \$1,500.00 per month, the same amount that it was receiving under its contract with the Airport. Thus, the amount claimed does not exceed the reasonable value of the services provided during the 4 months in question.

The FAA argues, however, that the first and second elements of a quantum meruit and quantum valebant claim are missing. It argues that because Combination was

providing its services prior to May 1 under a contract with the Airport, the FAA has no obligation to pay for these services, and it would not have been proper for the FAA to have entered into a contract for the same services.

We conclude that the first and second elements of a quantum meruit and quantum valebant claim are established in the record. The critical fact is that under Pub. L. No. 103-211, the FAA had a statutory duty to establish and operate an AFSS system at the Airport by September 1, 1994, and it decided to do so by arranging for the Unicom services at the Airport as provided by Combination. The procurement of the services provided by Combination was fully consistent with the statutory mandate and thus ultimately authorized by the mandate. Similarly, the second element is met: Combination's provision of the services made it possible for the FAA to bring itself into compliance with the mandate, constituting a clear benefit to the FAA.

Although the FAA states that it cannot find any evidence to show that it had agreed to take over funding responsibility for Unicom services before May 1, the lack of such evidence does not defeat Combination's claim. The FAA was authorized to assume the cost of providing these services, regardless of whether the Airport had properly terminated its existing contract with Combination, in order to ensure that an AFSS system was in operation at the Airport.

Apparently, the cognizant contracting officials at the FAA were unaware at that time that the Airport had withdrawn its own funding of Combination's services effective January 1, 1995, since Combination had continued its performance in the belief that it would receive payment from either the Airport or the FAA. Had these contracting officials known beforehand that the Airport intended to terminate its funding on January 1, the FAA could have entered into a valid contract for these services starting on that date. Moreover, while the FAA did not enter into a contractual agreement with Combination until May 1, Combination's performance of these services during the prior 4 months benefited the FAA because it ensured the FAA's compliance with the statutory mandate.

Accordingly, all the elements of a quantum meruit and quantum valebant claim are met. Combination may be paid the amount of \$6,044.40, as claimed.¹

/s/Lowell Dodge
for Robert P. Murphy
General Counsel

¹The FAA also objected to payment of the claim on the basis that it was presented by Mr. Robert Doyle of Diversified Credit Services (DCS) and that DCS lacks standing to present Combination's claim. In response, DCS has furnished this Office with copies of its collection agreement with Combination and an order to collect the amount at issue. These documents comply with the authorization requirements of 4 C.F.R. § 31.3, regarding a claim filed by a claimant's agent.