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DECISION



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

FILE: B-198875

DATE: June 10, 1980

MATTER OF: Jordan & Nobles Construction Co.

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DIGEST:

GAO has no authority to act on request for remission of amount withheld from monies owed under contract to cover wage underpayments in connection with contract awarded pursuant to Local Public Works Capital Development and Investment Act of 1976, since enforcement provisions of Davis-Bacon Act which GAO is required to administer do not apply to construction work under Local Public Works Capital Development and Investment Act of 1976.

By letter of October 19, 1979, with enclosures, and supplementary letters of February 5 and 8, 1980, counsel for Jordan & Nobles Construction Co. (Jordan & Nobles) requested the remission of \$47,000 withheld from amounts due that firm under City of El Paso, Texas, contract No. 447-4-35-201. The withholding was for the purpose of covering alleged wage underpayments by W. R. Pierce & Associates, one of Jordan & Nobles' subcontractors on the project. DLG04 DLG047

We have been advised by the Department of Labor that the alleged violations occurred on a contract awarded pursuant to the Local Public Works Capital Development and Investment Act of 1976, 42 U.S.C. § 6701 (1976). Section 109 of that act, 42 U.S.C. § 6708 (1976), provides:

"All laborers and mechanics employed by contractors or subcontractors on projects assisted by the Secretary under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary

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of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5). The Secretary shall not extend any financial assistance under this chapter for such project without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this provision, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), and section 276c of title 40."

While it is clear that the above-quoted section authorizes the Secretary of Labor to fix minimum wages in accordance with the Davis-Bacon Act and perform other related functions, there is no indication that the enforcement provisions of the Davis-Bacon Act pertaining to the Comptroller General apply to the Local Public Works Capital Development and Investment Act of 1976. We have had occasion to comment generally upon Davis-Bacon Act applicability to federally assisted programs such as those involved in the present case. We have stated that, while in numerous instances the Congress has extended the prevailing wage requirement to federally assisted construction and there has been a tendency to say that these programs are covered by the Davis-Bacon Act, this characterization is incorrect, since no direct Federal contracts are involved and neither the Davis-Bacon Act itself nor the enforcement provisions of the Davis-Bacon Act pertaining to our Office have been made applicable. See Abreen Corporation, B-184226, August 11, 1975, 75-2 CPD 102; B-155188, February 3, 1965; and B-155301, December 17, 1964.

Accordingly, since the enforcement provisions of the Davis-Bacon Act which we are required to administer do not apply to construction work under

the Local Public Works Capital Development and Investment Act of 1976, we have no authority to take any action on the request by Jordan & Nobles.

Harry R. Van Cleave
for Milton J. Socolar
General Counsel