

Phillips

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DECISION



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

FILE: B-203291

DATE: June 15, 1981

MATTER OF: H.A. Sack Co., Inc.

DIGEST:

Where contractor and its surety under payment bond refuse to reimburse subcontractor for labor and materials furnished in connection with performance of contract, subcontractor's only remedy is suit in Federal District Court under Miller Act, 40 U.S.C. § 270 (1976). GAO's responsibility is limited to furnishing copies of Miller Act contracts and payment bonds.

Counsel for H.A. Sack Co., Inc. (Sack), has requested this Office's assistance in regard to the refusal by Fortec Contractors (Fortec), the prime contractor under Department of the Army (Army) contract No. DACA21-78-C-0046, to pay his client for work performed as a subcontractor on the contract.

Counsel states the he was notified by the Army that funds withheld by the Government would be released to Fortec, but that neither Fortec nor Insurance Company of North America (INA), Fortec's surety under the contract, intended to pay Sack. Counsel requests that the Comptroller General investigate INA's involvement and determine if there is any legitimate reason for its refusal to pay his client. Counsel also requests that should we determine that INA has not carried out its Miller Act obligation, 40 U.S.C. § 270 (1976), the firm be removed from the list of approved sureties.

The Miller Act payment bond is the only protection provided by the Government for subcontractors. In the event any subcontractor furnishing labor

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and materials used in the prosecution of the prime contract continues to be aggrieved after attempting to work out an adjustment of his unpaid account with the contractor and its surety, the subcontractor is given the right under section 2 of the Miller Act, 40 U.S.C. § 270b (1976), to sue for collection under the payment bond in the United States District Court for the district in which the contract was performed and executed 90 days after, but no later than 1 year after, furnishing the last labor and materials.

Our responsibility to subcontractors under Government construction contracts is limited to furnishing copies of Miller Act contracts and payment bonds when entitlement has been established by affidavit in the manner prescribed by section 3 of the Miller Act, 40 U.S.C. § 276c (1976).

Other than the remedy provided by the Miller Act, the settlement of obligations between contractors and those furnishing labor and materials is a matter outside the jurisdiction of our Office, there being no privity of contract between the subcontractor and the United States. See Warrior Constructors, Inc. v. Harders, Inc., 387 F. 2d 727 (1967); United States v. Cleveland Electric Company of South Carolina, 373 F. 2d 585 (1967); B-172990, June 10, 1971.

Harry R. Van Cleve

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