

19740

DECISION



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

FILE: B-200299.2

DATE: October 9, 1981

MATTER OF: Crosby Construction Co.--Reconsideration

DIGEST:

1. Ruling that record was sufficient to substantiate worker's claim that he was not paid prevailing Davis-Bacon wage rate for work performed as carpenter and painter is affirmed on reconsideration.
2. Ruling that agreement between contractor and Department of Labor did not cover work performed by employee in March 1979, but rather work performed in May 1979, is modified on reconsideration to the extent that new evidence has established that agreement covered work performed in March 1979.

By letter dated August 4, 1981, counsel for Crosby Construction Co. (Crosby) requested reconsideration of our decision in Crosby Construction Co., B-200299, June 12, 1981, 81-1 CPD 479, which affirmed our October 7, 1980, determination that Crosby had underpaid one of its employees in violation of the Davis-Bacon Act, 40 U.S.C. § 276a (1976), during performance of contract No. DADA03-78-C-0065 for the installation and painting of doors at the Fitzsimons Army Medical Center (FAMC), Aurora, Colorado.

For the reasons stated below, our decision of June 12, 1981, is affirmed in part and modified in part.

As explained in our June 12, 1981, decision, Mr. Don Ravenhill, one of Crosby's employees, complained that he had performed work as a carpenter and as a painter on the FAMC contract during the month

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of March 1979 for which he was not paid the prevailing wage rate as prescribed by the Davis-Bacon Act, 40 U.S.C. § 276a (1976). As a result of the complaint, the Department of the Army (DOA) conducted a labor standards investigation and concluded that Mr. Ravenhill had been underpaid \$626.28 for work performed on the FAMC contract. This amount was withheld from monies owed Crosby under the contract and forwarded to our Accounting and Financial Management Branch, Claims Group. It was subsequently determined that Mr. Ravenhill was actually underpaid \$650; however, the additional \$23.72 was never forwarded to GAO.

One of Crosby's contentions was that the Department of Labor (DOL) had also conducted an investigation of the same alleged underpayments, discussed above, and that, on the basis of DOL's findings, Crosby had agreed to pay a certain sum of money to Mr. Ravenhill in settlement of his wage claims. According to the record, Crosby transmitted a sum of money to DOL which was tendered to Mr. Ravenhill, but rejected by him as not being enough. We are reconsidering this case on the basis of additional evidence, explained below, which concerns this agreement.

Prior to our June 12 decision, our Office requested a report from DOL concerning the alleged agreement. We were advised by DOL that there had been an investigation by DOL and a subsequent agreement between DOL and Crosby concerning the underpayment of Mr. Ravenhill on five Government contracts, one of which was the above-mentioned FAMC contract. In regard to the FAMC contract, DOL stated that the agreement covered only work performed by Mr. Ravenhill as a laborer during May 1979 and did not cover carpentry and painting performed by Mr. Ravenhill in March 1979. Also, the Summary of Unpaid Wages (Form WH-56), prepared by a DOL compliance officer, indicated that Mr. Ravenhill had been underpaid \$124.80 for work performed on the FAMC contract during the period May 9 through 29, 1979. Crosby persisted in its contention that DOL's investigation and the subsequent agreement included work performed by Mr. Ravenhill in March 1979. At the request of Crosby's counsel, this matter was discussed with an employee of DOL's Denver Regional Office who had participated in DOL's labor standards investigation. The DOL employee agreed with Crosby's counsel that DOL's investigation included the work

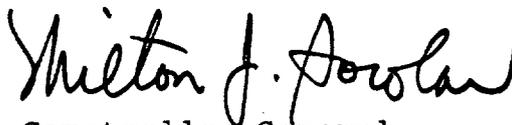
performed by Mr. Ravenhill in March 1979. As a result of the discussion, our Office received additional information which had not been included in the original administrative file.

The additional information included an Employee Personal Interview Statement (Form WH-31), signed by Mr. Ravenhill and witnessed by DOL's compliance officer, in which Mr. Ravenhill states that he worked for Crosby from August 1977 until May 4, 1979. There was also included with this information an Employment Information Form (Form WH-3) for Mr. Ravenhill which indicates that as of May 11, 1979, Mr. Ravenhill was not employed by Crosby. Also, included with the additional information was a Transcription and Computation Sheet (Form WH-55), filled out by the compliance officer, indicating that Mr. Ravenhill was underpaid \$124.80 for work performed as a laborer during March 1979. This information, coupled with the fact that Mr. Ravenhill made no claim for work performed in May 1979, convinced us that DOL's investigation covered March 1979 rather than May 1979. Finally, there were two Employee Personal Interview Statements by two of Crosby's employees. Both men stated that, while they had worked on the FAMC project, they never worked with Mr. Ravenhill. The certified payrolls indicate that these two employees worked at the FAMC site on all of the days claimed to have been worked by Mr. Ravenhill at the same site; however, these statements are in conflict with the statements of four Government workers at FAMC, DOL's compliance officer and Crosby's project manager, all of whom place Mr. Ravenhill at the FAMC site, at one time or another, during March 1979.

While the evidence of record is sufficient to establish that Mr. Ravenhill performed work on the FAMC contract during March 1979, the question is whether Mr. Ravenhill performed as a carpenter, painter or laborer. The compliance officer, while admitting that it was difficult to identify whether Mr. Ravenhill worked as a carpenter, laborer, painter, or a combination of two or more of these, offers no evidence to support his conclusion that Mr. Ravenhill's work was that of a laborer. On the other hand, DOA, in its investigation, produced statements from four

Government workers at FAMC who stated that they saw Mr. Ravenhill painting on the project during the period in question. Also, the inspector for this project, who apparently knew the two Crosby carpenters who worked the project, since he refers to them by name in his reports, states in his March 15, 1979, report that there is a painter painting doors. Since there is no evidence that Mr. Ravenhill performed as a laborer during the period involved, we conclude that he worked primarily as a painter and a few hours as a carpenter.

There is on deposit with the Government a total of \$751.08, consisting of \$626.28 in contract withholdings at GAO and \$124.80 Crosby deposited with DOL for Mr. Ravenhill. Deducting the \$650 owed Mr. Ravenhill from the \$751.08 deposit leaves a balance of \$101.08 to be returned to Crosby. Of the \$650 owed Mr. Ravenhill, DOL is holding the \$124.80 deposited by Crosby pending a claim for it from Mr. Ravenhill. Therefore, there remains a balance of \$525.20 which will be disbursed by our Office to Mr. Ravenhill.



Acting Comptroller General
of the United States