

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

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September 24, 1973

B-179291

Mr. R. G. Bordley
Chief, Accounting and Finance Division
Office of the Comptroller
Defense Supply Agency

Dear Mr. Bordley:

In letter of July 24, 1973 (DSAM-CFF), you requested an advance decision as to whether the amount of \$98,920.15 determined to be the extent of Walsh-Healey Act, 41 U.S.C. 35, et seq., wage underpayments under five previously settled contracts with the Airport Machining Corporation, Martin, Tennessee, may be recovered by set-off against current contracts with the contractor containing Walsh-Healey provisions in view of the "no set-off" provision of the Assignment of Claims Act, 41 U.S.C. 15 and 31 U.S.C. 203, in the current contracts.

Ordinarily, the amount due the United States for a Walsh-Healey violation under one contract may be withheld from the amount due the contractor under another Walsh-Healey contract, 41 U.S.C. 36 and Ready-Mix Concrete Company v. United States, 130 F. Supp. 390 (1955). However, where the contract against which the withholding is proposed to be made has been assigned and contains a "no set-off" provision the result is different.

The "no set-off" provision of the Assignment of Claims Act states:

"Any contract of the Department of Defense * * * may, in time of war or national emergency proclaimed by the President * * * provide * * * that payments to be made to the assignee of any moneys due or to become due under such contract shall not be subject to reduction or set-off, and if such provision or one to the same general effect has been at any time heretofore or is hereafter included or inserted in any such contract, payments to be made thereafter to an assignee of any moneys due or to become due under such contract, whether during or after such war or emergency, shall not be subject to reduction or set-off for any liability of any nature of the assignor to the United States or any department or agency thereof which arises independently of such contract * * *."

[over the Walsh-Healey Act]

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Section 2 of the Walsh-Healey Act, 41 U.S.C. 36, provides:

"Any breach or violation of any of the representations and stipulations in any contract for the purposes set forth in section 35 of this title shall render the party responsible therefor liable to the United States of America for * * * a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of such contract * * *."

Since wage underpayment violations of the Walsh-Healey Act render the contractor "liable to the United States of America" and the "no set-off" provision of the Assignment of Claims Act specifically provides that payments due under a contract "shall not be subject to reduction or set-off for any liability of any nature of the assignor [contractor] to the United States * * * which arises independently of such contract," the "no set-off" provisions of the current contracts are applicable in this instance against any recovery by set-off for violations under the previously settled contracts.

In view of the foregoing, there should be no set-off in the current situation.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States