

# DECISION



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

50961

FILE: B-184226

DATE: August 11, 1975

97505

MATTER OF: Abreen Corporation

## DIGEST:

GAO has no authority to act on request for remission of amount deposited with HUD as result of alleged wage underpayments in connection with contract covered by National Housing Act, since enforcement provisions of Davis-Bacon Act which GAO is required to administer do not apply to construction work under National Housing Act.

Abreen Corporation (Abreen) has requested the remission of \$1,044.57 which the Department of Housing and Urban Development (HUD) required it to deposit as a result of alleged wage underpayments in connection with contract No. 024-44061-LDP-SUP covering the Redden Gardens project in New Hampshire.

We have been advised by officials at HUD that the subject wage violations occurred on a contract covered by the National Housing Act, 12 U.S.C. § 1701 (1970). Section 212(a) of the National Housing Act, 12 U.S.C. § 1715c(a) (1970) requires contractors to certify that:

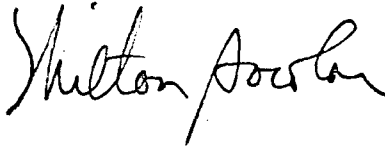
"\* \* \* laborers and mechanics employed in the construction of the dwelling or dwellings or the housing project involved have been paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed on construction of a similar character as determined by the Secretary of Labor, in accordance with the Davis-Bacon Act."

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, there is no indication that the enforcement provisions of the Davis-Bacon Act apply to the National Housing Act. For that matter the language of 12 U.S.C. § 1715c(b) (1970) to the effect that "The Secretary (of HUD) is authorized to make such rules and regulations as may be necessary to carry out the provisions of this section" would indicate the opposite conclusion. We have had occasion to comment generally upon Davis-Bacon Act applicability to federally-assisted programs, such as those involving the National Housing Act, as follows (A-34106, B-3368, April 7, 1959, to the Chairman, House Committee on Education and Labor):

"It is to be noted that in numerous instances the Congress has extended the prevailing wage requirement to Federally assisted construction \* \* \* and that there has been a tendency to say that these programs are covered by the Davis-Bacon Act. However, this characterization is incorrect. While the same or similar minimum wage requirements have been adopted for various assisted programs, no direct Federal contracts are involved and neither the Davis-Bacon Act itself nor the enforcement machinery of the Davis-Bacon Act has been made applicable. Nor has other enforcement machinery been supplied by legislation \* \* \*."

See also B-155188, February 3, 1965; 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 National Housing Act we have no authority to take any action on the Abreen request.

  
for Paul G. Dembling  
General Counsel