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

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B-185020

MAY 9 1978

The Honorable Lester A. Fettig  
Administrator, Office of Federal  
Procurement Policy

Dear Mr. Fettig:

It has for many years been the position of our Office that wage rates prescribed in the Davis-Bacon Act, 40 U.S.C. § 276a (1970), do not apply to work performed off the site of construction whether by contractors, subcontractors or materialmen, even though performed in the immediate community, regardless of the fact that the work might be performed on a project operated exclusively, or nearly so, for use in connection with the prime contract. This position was reaffirmed in our decision in Sweet Home Stone Company, et al., B-185020, December 22, 1976, 76-2 CPD 519 (copy enclosed), wherein we reversed a ruling by the Department of Labor's Wage Appeals Board that three gravel quarries, located from 1/4 of a mile to 6 miles from the contract job sites, were on the "site of the work" since they were operated exclusively for use in connection with the prime contract.

FPR However, the "site of the work" definition contained in section 18-701(b)(2) (1976 ed.) of the Armed Services Procurement Regulation (ASPR), as well as in section 1-18.701-1(b)(2) (1964 ed. amend. 115) of the Federal Procurement Regulations (FPR), is inconsistent with our holding in the Sweet Home case in that it provides, in pertinent part, as follows:

"Fabrication plants, 'mobile factories,' batch plants, borrow pits, job headquarters, tool yards, etc., are part of the 'site of work' provided they are dedicated exclusively or nearly so to performance on the contract and are so located in proximity to the actual construction location that it would be reasonable to include them."

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We object to the above language for the reason that the act itself provides only for the payment of predetermined hourly rates to "mechanics and laborers employed directly upon the site of work," which is a geographical or physical criterion. No mention is made of a "functional" criterion, i.e., whether or not the off-site work is dedicated exclusively to the performance of the contract. Moreover, the legislative history of the act indicates that the above-mentioned type of activities was not to be included within the scope of the act's coverage. See 43 Comp. Gen. 84 (1963).

For the above reasons, we urge that when your agency promulgates that portion of the Federal Acquisition Regulations dealing with this matter, that it adopt GAO's position.

Sincerely yours,

L. KELLER

deputy Comptroller General  
of the United States

Enclosure