



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-222077

April 9, 1986

Sylvester L. Green, Director
Contract Standards Operations
U.S. Department of Labor
Room S3518
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Mr. Green:

Subject: Fortec Constructors - Prime Contractor
(A Joint Venture of Forest Builders, Inc.
and Tectonics, Inc. of Florida)
Corz' Cables, Florida.

Webster Gravel & Asphalt Co., Minden, LA;
Spartan Mechanical, Inc., Charlotte, NC;
Subcontractors

Contract No. DACA 63-79-C-0123,
Your file: LA-85-373

By letter dated August 26, 1985, you requested that we distribute to wage claimants funds withheld for violations of the Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-5 (1982), and the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 327-332 (1982), by Fortec Constructors, Webster Gravel & Asphalt Company, and Spartan Mechanical, Inc. As to whether these firms would be placed on the ineligible contractors list for these violations, you stated that, in view of the circumstances, the Department of Labor does not consider further administrative action appropriate. For the reasons that follow, we concur that Fortec Constructors, Webster Gravel & Asphalt Company, and Spartan Mechanical, Inc., should not be debarred.

These violations arose in connection with performance of contract number DACA 63-79-C-0123 between Fortec and the United States Army. This was a contract for construction work on an Explosive Waste Incinerator at the Louisiana Army Ammunition Plant in Shreveport, Louisiana. Webster Gravel & Asphalt Company, and Spartan Mechanical, Inc. were subcontractors to Fortec. The contract was subject to the Davis-Bacon Act requirement that certain minimum wages be

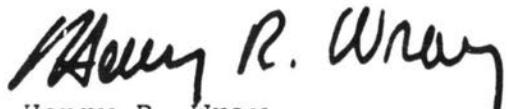
paid. Further, pursuant to 29 C.F.R. § 5.5(a) (1985), contractors are to submit payroll records certified as to correctness and completeness, specifying for each worker such things as correct classification and wage rate. The Army found, as a result of an investigation that the employees of the companies involved were not paid the minimum wages or overtime rates required pursuant to the Davis-Bacon Act and the Contract Work Hours and Safety Standards Act.

The investigation showed that Fortec Constructors and its subcontractors had misclassified some employees and had failed to submit proper contract documents and payrolls to the Army. As a result the Army recommended that Fortec Constructors, and the subcontractor be placed on the list of ineligible bidders, since it was the opinion of the contracting officer that the violations were intentional.

Based on our independent review of the record we conclude that the violations were primarily technical having to do with the proper classification of certain employees and with the proper rates to be paid. The evidence relative to record keeping show some contractors errors or misstatements not of the type which would be considered substantial violations of the contractor's duty to its employees. Accordingly we do not find that the violations were intentional and therefore a basis for debarring the contractors under the Davis-Bacon Act.

Further, we find no reason to object to the payment of the wage claimants. Accordingly, the funds on deposit with our Office--\$ 1,651.55--will be disbursed to the wage claimants in accordance with established procedures.

Sincerely yours,


Henry R. Wray
Associate General Counsel

cc: Fortec Constructors
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Livsey & Company, Inc.
successors to **Spartan Mechanical, Inc.**
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