



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-219704

January 15, 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: Joseph Morton Co., Inc.  
New York, New York  
Contract No. GS-02B-17,008  
Your File No. NY-77-23 to 25

By letter dated April 29, 1985, you requested that we distribute to wage claimants funds withheld from Joseph Morton Co., Inc. (Morton), for violations of the Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-5 (1985) and the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 327-332 (1982), on Contract No. GS-02B-17,008. As to whether Morton should be placed on the ineligible bidders list, you stated that the Department of Labor (DOL) did not consider further administrative action to be appropriate. We agree that the wage claimants should be paid and, given all the circumstances of this case, that Morton should not be debarred.

As a result of its initial investigation of this matter, DOL found that Morton failed to pay the required prevailing wage rates to its employees. In addition, Morton was also found to have failed to pay these employees overtime compensation for hours worked in excess of 8 in a day or 40 in a week. Backwages were computed in the amount of \$36,400.18 due seven employees.

From the record you have supplied to us, it appears that Morton disagreed with DOL's findings of violations of the Acts referenced above, and requested a hearing pursuant to 29 C.F.R. § 5.11(b). As a result of Morton's request, and after a hearing, the Administrative Law Judge issued a

Recommended Decision and Order. Joseph Morton Co., Inc., Case No. 77-DB-109 (June 4, 1979). In this decision the Administrative Law Judge held that Morton owed backwages totaling \$36,400.18 to seven of its employees, and required a further investigation to determine the contractor's status of compliance for the contract period between May 9, 1975, and the end of the contractor's performance.

A supplemental hearing was held, and the Administrative Law Judge issued a Recommended Supplemental Decision and Order which held Morton liable for an additional \$16,743.22 in backwages due to five of the seven employees for whom backwages were found due in the original proceeding. Joseph Morton Co., Inc., Case No. 77-DB-109 March 18, 1980).

Subsequently, the Assistant Secretary of Labor for Employment Standards affirmed the Recommended Original and Supplemental Decision and adopted them as his own. Joseph Morton Co., Inc., Case No. 77-DB-109 (November 3, 1980). This matter was then appealed to the Wage Appeals Board which upheld the Assistant Secretary's Decision. Joseph Morton Co., Inc., WAB Case No. 80-15 (July 23, 1984).

Based on our independent review of the record insofar as it pertains to the Davis-Bacon Act, we find no evidence indicating that Morton still wishes to dispute the underpayments alleged to be due to the seven employees and withheld under the contract in question. This, combined with the record in this matter and lack of proof of payment, is sufficient to establish that the employees were underpaid the amounts in question. See C. Brantingham and Associates, B-219040, November 25, 1985. Thus, the funds on deposit with our Office of \$53,143.50 will be distributed to the wage claimants in accordance with established

procedures. Furthermore, in view of your recommendation and all the circumstances of this case, we decline to debar Joseph Morton Co., Inc.

Sincerely yours,

*Henry R. Wray*  
Henry R. Wray  
Associate General Counsel

cc: Branko Stupar, Esquire  
Faulkner, Shands, Stupar  
and Tucker  
Suite 303  
910 16th Street, N.W.  
Washington, D.C. 20006

Joseph J. Battaglia, President  
Joseph Morton Co., Inc.  
226 Pacific Street  
Brooklyn, New York 11201