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

OFFICE OF GENERAL COUNSEL

B-219041

November 29, 1985

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: Tycoon Construction Corporation
Brooklyn, N.Y.
Contract No. DAAG60-82-C-0210
Your File No. NY-84-181

We refer to your letter of May 10, 1985, wherein you request that we distribute to wage claimants funds withheld from Tycoon Construction Corporation (Tycoon) 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). As to whether Tycoon should be placed on the ineligible bidders list for these violations, you concluded that in view of the circumstances, no further administrative action would be necessary.

Tycoon performed work under the above contract with the Department of the Army, doing reroofing and miscellaneous repairs at Stewart Army Subpost, New Windsor, New York. This contract was subject to the Davis-Bacon Act requirements that certain minimum wages be paid. The contract was also subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. The evidence in the record shows that Tycoon failed to pay nine employees the applicable prevailing wage rate for the classification of work performed resulting in $6,613.32 in back wages due under the Davis-Bacon Act. The record also indicates that Tycoon failed to pay eight of these employees proper overtime compensation for certain hours worked in excess of 8 in a day or 40 in a week resulting in $2,072.16 due in back wages under the Contract Work Hours and Safety Standards Act. Since Tycoon failed to make restitution, the

Army withheld the back wages, which total $8,685.48, in addition to $760.00 assessed in liquidated damages from funds due on the contract.

The record demonstrates that the Army thoroughly investigated this matter. The Army recommended that Tycoon be debarred based on its failure to pay its employees the proper prevailing wage rates and proper overtime compensation. However, the Department of Labor recommends, without giving a specific reason, that Tycoon not be debarred.

The Davis-Bacon Act provides that the Comptroller General is to debar persons or firms whom he has found to have disregarded their obligations to employees under the Act. 40 U.S.C. § 276a-2. In Circular Letter B-3368, March 19, 1957, we distinguished between "technical violations" which result from inadvertence or legitimate disagreement concerning classification, and "substantial violations" which are intentional as demonstrated by bad faith or gross carelessness in observing obligations to employees with respect to the minimum wage provisions of the Davis-Bacon Act.

Based on our independent review of the record, we conclude that Tycoon should not be debarred. The record does suggest the occurrence of some irregularities by Tycoon in observing its obligations to its employees under the Davis-Bacon Act, such as the misclassification of work, inaccurate certified payrolls and the retention of monies. However, there is not sufficient evidence of willful violation of the labor standards provisions to warrant debarment.

Accordingly, the total funds on deposit with our Office--$9,445.48--will be disbursed to the wage claimants in accordance with established procedures.

Sincerely yours,

Henry R. Wray

Henry R. Wray
Associate General Counsel

cc: Mr. Alex Vassiliou, President
Tycoon Construction Corporation
62-09 5th Avenue
Brooklyn, New York 11220