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[Hiring of Nonresident Alien Workers for Economic Development Administration-Funded Projects in El Paso, Texas]. E-189802. October 28, 1977. 2 pp.

Letter to William A. Adams; by Rollee Lowenstein, Assistant General Counsel.

Issue Area: Consumer and Worker Protection (900); Income Security Programs (1300).

Contact: Office of the General Counsel: General Government Matters.

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Organization Concerned: Economic Development Administration.

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

B-189802

OFFICE OF GENERAL COUNSEL

28 1977

Mr. William R. Adams
3205 Kilbenny
El Paso, Texas 79925

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Dear Mr. Adams:

Reference is made to your letter of July 23, 1977, wherein you question the hiring of nonresident alien workers for Economic Development Administration-funded projects in El Paso, Texas. You indicate in your letter that you have been told by City and contractor personnel that contractors under such projects "cannot refuse to hire aliens by direction of the Department of Labor and the Davis-Bacon Decision." You suggest that if the hiring of nonresident aliens is legal, it should nevertheless be prohibited by contract.

The funds for the El Paso Senior Citizen Activity Center project referred to in your letter are provided under a grant authorized under the provisions of the Public Works Employment Act of 1976 (Pub. L. No. 94-369, 90 Stat. 999 (July 22, 1976) as amended by Pub. L. No. 95-28, 91 Stat. 116 (May 13, 1977)). That Act authorizes the Secretary of Commerce, acting through the Economic Development Administration, to make grants of Federal funds to local governments such as the City of El Paso for the construction of local public works projects. Therefore, we suggest that you address your inquiries to the Department of Commerce, as the agency charged with administering the program. We have, however, briefly looked into the issues you raise, and offer the following information.

The Davis-Bacon Act (40 U.S.C. §§ 276a-276a5 (1970)), originally enacted by Congress in 1931 and amended several times since then, provides in general that workmen under certain contracts to which the United States or the District of Columbia is a party are to be paid wages at rates not less than those prevailing on similar construction in the locality. Although the United States is not a party to contracts awarded by local governments using funds granted under the 1976 Act, section 109 of the 1976 Act makes Davis-Bacon wage standards applicable to all laborers and mechanics employed on projects assisted with Federal moneys under the Act. The Davis-Bacon Act makes no distinction between alien and citizen laborers, with regard to wage standards and, to our knowledge, has no bearing on whether or not aliens are hired. More generally, we are not aware either of any Department of Labor or other requirement that aliens be hired for projects such as those you refer to, or of any prohibition against hiring them either.

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An examination of the 1976 Act's legislative history indicates that this legislation was enacted during a time of national economic difficulty, particularly in the construction industry. A major purpose of the Act, therefore, was to stimulate the construction industry and reduce unemployment. We find no record of any express indication by Congress of its specific intent regarding grant funds being used for the hiring of aliens, except that section 102(a)(7) of the Act, as added by Pub. L. No. 95-28, prohibits awards of grant funds unless the grantee certifies that it will not award a contract to any bidder who hires illegal aliens under the contract. However, the Act contains no provision which expressly excludes nonresident aliens, who are in the United States not in violation of the law, from participation in projects funded, in whole or in part, from a grant of the Economic Development Administration.

We have been discussing only the legality of the employment of aliens. As stated, there is no express or implied prohibition in either the law, regulations, or legislative history providing, of course, that the alien is in the United States legally. If you wish to pursue the question of the desirability of this practice, we again suggest that you write to the Secretary of Commerce.

Sincerely yours,

Rolice Lowenstein

(Mrs.) Rolice Lowenstein
Assistant General Counsel