



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

1020 ID

OFFICE OF GENERAL COUNSEL

B-193145

OCT 30 1978

The Honorable Benjamin A. Gilman  
House of Representatives

Dear Mr. Gilman:

This is in response to your communication dated October 2, 1978, concerning New Windsor Metal Fabrications, Ltd. (New Windsor), a structural steel fabricator located in Vails Gate, New York. New Windsor is a subcontractor on the Army Corps of Engineers Technical Data Facility project at Picatinny Arsenal, Dover, New Jersey, and alleges that as of September 26, 1978 it has not received final payment of \$6,000.00 from the prime contractor.

A subcontractor which has not been paid in full for labor and materials furnished under a Government contract for the construction, alteration, or repair of a public building or public work of the United States has no recourse against the Government, and the Government is essentially powerless to enforce the contract between the prime contractor and the subcontractor. However, the subcontractor is not without an available remedy, inasmuch as it has the statutory right to sue on the payment bond furnished to the United States by the prime contractor on the basis of the Miller Act, 40 U.S.C. §§ 270a, 270b (1970), subject to any available defenses the prime contractor might seek to assert. The right to sue is limited by a one year "statute of limitations," and the jurisdiction of the Federal district courts is limited.

We therefore suggest that in the event New Windsor has still not received the payment it claims is due, that it pursue its rights under the Miller Act as promptly as possible so as not to find itself foreclosed of this right by the one year limitation.

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We hope this information will be of assistance to you.

New Windsor's letter to you is returned herewith as requested.

Sincerely yours,

~~MILTON SOCCIAN~~

*for* Paul G. Dembling  
General Counsel

Enclosure