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DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

DLG 03316

FILE: B-196349 DATE: November 9, 1979

MATTER OF: Ben R. Shippen d/b/a Assurance Company

DIGEST:

[Applicability of Davis-Bacon Act To Offsite Work Performed Under Construction Contract]

Request for ruling by GAO concerning applicability of Davis-Bacon Act to certain offsite work performed under construction contract will not be considered since matter is before court of competent jurisdiction.

DLG 515

This matter involves a request by Ben R. Shippen d/b/a Assurance Company for a ruling on the applicability of the Davis-Bacon Act, 40 U.S.C. § 276a (1976), to certain work performed by Assurance under contract DACA84-74-C-0003. For reasons discussed below, the matter is not appropriate for our consideration.

Contract DACA-74-C-0003, for the renovation of family housing at Schofield Barracks, Oahu, Hawaii, was awarded to Assurance by the Department of the Army. Performance on the contract commenced in October 1973, and work was substantially completed by October 1974. By letter dated December 20, 1974, the Department of the Army informed Assurance that the work performed at the fabrication worksite was covered by the Davis-Bacon Act and that all of the workers at the fabrication worksite had been underpaid under applicable Davis-Bacon wage rates. Moreover, the overtime paid pursuant to the Contract Work Hours and Safety Standards Act (CWHSSA), 40 U.S.C. § 327, et seq., was insufficient since it was based on a lower basic rate of pay than required by the Davis-Bacon Act. Thus, Assurance was determined to be in violation of CWHSSA. Pursuant to the provisions of CWHSSA, the procuring activity assessed Assurance $10 in liquidated damages for each violaton for a total of $5,210.

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On July 2, 1979, Assurance instituted a civil action in the United States Court of Claims (Ben R. Shippen d/b/a Assurance Company v. The United States, Ct. Cls. No. 281-79C) seeking a judgment in the amount of the liguidated damages assessed by the Department of the Army. In deciding the issue before the court, it appears likely that the question of the applicability of the Davis-Bacon Act to the work performed under the contract will be a matter which the court must consider.

It is the policy of our Office not to decide matters where, as in the present case, the material issues involved are likely to be disposed of in litigation by a court of competent jurisdiction and the court has not expressed an interest in our opinion. See Sovereign Construction Company, Ltd.; City of Philadelphia, B-185874, March 8, 1977, 77-1 CPD 168, and Matter of Natron Corp. et al., 53 Comp. Gen. 730 (1974), 74-1 CPD 154. Therefore, our Office will not consider the matter.

Milton J. Socolar
General Counsel