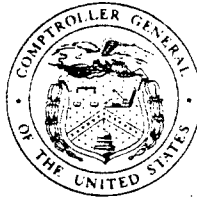


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DECISION



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

FILE: B-200299

DATE: June 12, 1981

MATTER OF: Crosby Construction Co.

DIGEST:

Record is sufficient to substantiate worker's claim that he was not paid prevailing Davis-Bacon wage rate for work performed as carpenter and painter since contractor failed to furnish sufficient evidence to contrary. Alleged settlement between contractor and Department of Labor concerning work in question did not cover painting and carpentry work, but rather work as "laborer" claimed by worker for different contract period.

By letter of November 12, 1980, Crosby Construction Co. (Crosby) requested reconsideration of our determination of October 7, 1980, that it had underpaid one of its employees in violation of the Davis-Bacon Act, 40 U.S.C. § 276a (1976), during the performance of contract No. DADA03-78-C-0065 for the installation and painting of doors at the Fitzsimons Army Medical Center (FAMC), Aurora, Colorado.

As the result of a complaint by Mr. Don Ravenhill, an employee of Crosby, that during March 1979 he had performed work as a painter and as a carpenter on the above contract, but had not been paid the prevailing wage rate as required by the Davis-Bacon Act, the Department of the Army (DOA) conducted a labor standards investigation of Crosby covering work under the above contract. DOA concluded, as a result of the investigation, that Mr. Ravenhill had performed work on the contract both as a painter and as a carpenter, but had been paid the lower wage rate of a construction estimator. This violates the Davis-Bacon Act which requires that the employee be paid the prevailing wage rate, as determined by the Secretary of Labor, for the particular classification of work performed

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by the employee. Pursuant to section 1 of the Davis-Bacon Act, the contracting officer withheld \$626.28, from monies owed Crosby under the contract, to cover the alleged underpayments. This amount was forwarded to our Accounting and Financial Management Division, Claims Group, for disbursal. It was originally determined that Mr. Ravenhill was underpaid a total of \$626.28, but later this total was revised upward to \$650.

Crosby alleges that Mr. Ravenhill's claim is unsubstantiated and that the doors claimed to have been painted by Mr. Ravenhill were, in fact, painted prior to the time that Mr. Ravenhill claims to have painted them. Crosby also questions why the Government inspector, whom Crosby claims visited the site daily, did not at any time during the 2-week period claimed to have been worked by Mr. Ravenhill question Mr. Ravenhill concerning his wage rate. Finally, Crosby claims that this matter was settled by an agreement with the Department of Labor (DOL).

Our Office requested a report from DOL concerning the alleged agreement. DOL advised us that there was an investigation by DOL and a subsequent agreement between DOL and Crosby concerning underpayment of Mr. Ravenhill on five Government contracts, one of which was the above-mentioned FAMC contract. However, in regard to the FAMC contract, the agreement covered only work performed by Mr. Ravenhill in the "laborer" classification during May of 1979 and did not cover the painting/carpentry work performed by the employee in March 1979. The latter violations were investigated only by the Army. DOL declined to conduct an investigation of these alleged Davis-Bacon violations.

While perhaps the number of hours claimed to have been worked by Mr. Ravenhill in the painter and carpenter classifications have not been substantiated to the degree of exactitude demanded by Crosby, we do not agree that Mr. Ravenhill's claim has not been substantiated. According to the record, several Government workers at FAMC saw Mr. Ravenhill performing the work in question. Moreover, with the exception of a small amount of painting which was apparently done by two of Crosby's carpenters, Crosby offers no explanation as to who, if not Mr. Ravenhill, did the painting which constitutes the greater part of the hours claimed by Mr. Ravenhill.

Crosby's payrolls do not list any painters. Even the copies of the timesheets, furnished by Crosby in support of its contention that doors were painted prior to the time Mr. Ravenhill claimed to have painted them, merely establish that two of Crosby's carpenters performed some painting during February and March of 1979. They do not establish that Mr. Ravenhill did not paint for the number of hours that he claims. We note that the number of hours indicated on these time-cards for painting is considerably less than the 70 hours estimated to be necessary to paint these doors. Although requested to do so, Crosby failed to furnish any evidence to establish that Mr. Ravenhill was doing work other than painting or carpentry work during the period in question. According to Crosby's project manager, Mr. Ravenhill's function as a construction estimator, the job for which he was originally hired, was to assist the project manager in various ways to insure that the several jobs that Crosby was performing progressed satisfactorily. One of these functions was the purchase and delivery of materials. According to the record, it was suggested to the project manager that if he could furnish receipts for the purchase of materials for any of the days in question, this would satisfactorily establish that the employee was not, for at least part of the day, engaged in painting or carpentry work. Crosby failed to furnish any receipts.

In regard to the 6 hours of carpentry work that Mr. Ravenhill claims to have performed, he claims that this time was spent installing a door and a door frame. One of the Government employees at FAMC stated that he saw an individual fitting Mr. Ravenhill's description installing doors. Moreover, Crosby's project manager admits that Mr. Ravenhill did do some minor repair and touchup work, as well as assisting one of the carpenters in hanging one of the doors. We believe that the record is sufficient to establish that the employee performed 6 hours of carpentry work.

We believe that the record taken as a whole is more supportive of the employee's contentions than it is of Crosby's contentions. As such, we believe

the record is sufficient to substantiate the employee's claims. Accordingly, our determination that Crosby underpaid Mr. Ravenhill in violation of the Davis-Bacon Act is affirmed and the money is being disbursed to Mr. Ravenhill.

Harry R. Van Cleve

Harry R. Van Cleve
Acting General Counsel