



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

OFFICE OF GENERAL ACCOUNTING

B-219809.2

February 14, 1986

Finance and Accounting Officer  
 McAlester Army Ammunition Plant  
 McAlester, Oklahoma 74501-5000

Dear Sir:

This responds to your letter of January 29, 1986; a February 5 letter from the United States Attorney for the Eastern District of Oklahoma; and a February 7 letter from the Litigation Division of the Army's Office of the Judge Advocate General, concerning a claim by Double "LL" Contractors for payment of funds withheld for Davis-Bacon Act violations in connection with contract No. DAAA31-81-C-0046. The contract was for the rehabilitation of DC Type Magazines at the McAlester Army Ammunition Plant.

The claim is the subject of a lawsuit pending in the United States District Court for the Eastern District of Oklahoma (Civil Action 86-11-C) brought by Double "LL" to compel payment as agreed to by the contractor and the Department of Labor. We understand that the court intends to issue a Mandamus to direct the Army to pay, but has afforded 10 days (until February 17) for the government to obtain an advance decision by our Office on the matter.

We see no legal impediment to payment.

The record shows that after the Army withheld approximately \$40,000 from Double "LL" for the violations, DOL referred the matter to an administrative law judge under applicable procedures. Before proceeding to a hearing, however, DOL and Double "LL" entered into a settlement agreement, subsequently approved (on September 10, 1985) by the administrative law judge, in which the parties agreed that the Army would release \$15,000 of the retained funds to DOL for disbursement to the employees due back wages, and the balance to Double "LL."

Meanwhile, the Army's Assistant Comptroller for Finance and Accounting, by letter of July 29, 1985, requested an advance decision from our Office as to the propriety of paying Double "LL" \$51,806.68 claimed for work performed under the same contract. As the McAlester Finance and Accounting Officer, after reviewing a report prepared by the Army Criminal Investigation Command, you had determined that the claim was tainted by fraud and was not payable.

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By letter of September 17, 1985, we advised you that under the Forfeiture Statute, 28 U.S.C. § 2514 (1982), the Claims Court possesses express authority to determine whether fraud exists in the presentation of a claim and whether forfeiture is warranted. We stated that our position has been that where a government finance officer reasonably suspects that a claim is tainted by fraud, he should refuse to approve it, in order to reserve any factual determinations for Claims Court scrutiny. We concluded that since you had a reasonable basis for finding that Double "LL"'s claim was tainted by fraud, you should continue to withhold payment pending a Claims Court ruling should Double "LL" pursue the matter in that forum.

It appears from the record that you are refusing to issue payment pursuant to the DOL-Double "LL" settlement agreement because some of the labor involved in the Davis-Bacon Act violations involved repair to railroad tracks that also was included in the \$51,806.68 claim, and based on your view that since the first claim may have been tainted by fraud, so might the current claim.

Our September 17 finding that there was a reasonable basis to withhold the \$51,806.68 in issue was, as stated in our letter, based on the fact that the Army Criminal Investigation Command report found that Double "LL" had claimed more for payment to employees who performed railroad repair services than the certified payrolls showed actually was due; had inflated the cost of tools and materials; had duplicated those costs in totaling the claim; and had misrepresented its status as a small business firm in order to be considered for the contract. The U.S. Attorney advises, however, that the District Court Judge has concluded that the money now in issue is not connected with the claims discussed in the September 17 letter and, therefore, that the Finance and Accounting Officer should make payment according to the settlement agreement. In view of the Court's conclusion, and since you do not establish that there is any substantive evidence in the record you have provided us that supports the suspicion that the claim may be tainted by fraud, we see no reasonable basis to withhold the funds in issue.

Accordingly, we do not believe the record supports the refusal to approve payment to Double "LL."

Sincerely yours,

*Harry R. Van Cleve*

Harry R. Van Cleve  
General Counsel