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

OFFICE OF GENERAL COUNSEL

B-219691

January 14, 1986

Sylvester L. Green, Director
Contract Standards Operations
U.S. Department of Labor
Room S3518
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Mr. Green:

Subject: Mit-Con, Inc. - Prime Contractor
Sherman, Texas
D&S Door Company - Subcontractor
Richardson, Texas
Contract No. DACA63-81-C-0081
Your File No. LA-84-283

By a letter dated June 20, 1985, you requested that we distribute to wage claimants funds withheld for violations of the Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-5 (1982), by Mit-Con, Inc. (Mit-Con), and the D&S Door Company (D&S). As to whether Mit-Con and D&S should be placed on the ineligible contractors list for these violations, you stated that, in view of the circumstances, the Department of Labor (DOL) does not consider further administrative action appropriate. For the reasons that follow, we concur that Mit-Con and D&S should not be debarred.

These violations arose in connection with the performance of contract number DACA63-81-C-0081 between Mit-Con and the United States Army (Army). This was a contract for contruction work--including the installation of special doors--at Fort Polk, Louisiana. D&S was a subcontractor to Mit-Con. The contract was subject to the Davis-Bacon Act requirement that certain minimum wages be paid. Further, pursuant to 29 C.F.R. § 5.5(a) (1985), contractors are to submit payroll records certified as to correctness and completeness, specifying for each worker--among other things--his or her correct classification.

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The Army found, as a result of an investigation, that D&S employees were not paid the minimum wages required pursuant to the Davis-Bacon Act. Four employees were underpaid. Further, the investigation revealed that certified payrolls were incorrect in that these employees were incorrectly classified "Elevator Constructor Helpers," rather than "Carpenters." This resulted in the underpayments.

Based on our independent review of the record, we conclude that these violations were the result of legitimate disagreement concerning classification. Legitimate disagreement concerning classification resulting in a technical violation is a basis for deciding not to debar under the Davis-Bacon Act. See Circular Letter B-3368, March 19, 1957, and Arthur C. Harpring, Inc., B-218853, October 29, 1985. The Army recommended that Mit-Con and D&S not be debarred. The record shows that the first notice of these violations was given after completion of the contract work, that the Army variously informed Mit-Con that the proper classification was "Ironworkers" and--later--"Carpenters," and that Mit-Con sought--but was denied--the additional retroactive classification "Overhead Door Installers" for this contract. We conclude that the record does not contain sufficient evidence of intentional violation of the labor standards provisions of the Davis-Bacon Act--as opposed to legitimate disagreement concerning classification--to warrant debarment. Therefore, we decline to debar Mit-Con and D&S.

Further, we find no reason to object to the payment of the wage claimants. Accordingly, the funds on deposit with our Office--$934.72--will be disbursed to the wage claimants in accordance with established procedures.

Sincerely yours,

Henry R. Wray

Henry R. Wray
Associate General Counsel

cc: Steve Mitchell, President
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