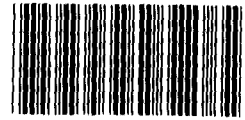




UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

PROCUREMENT, LOGISTICS,
AND READINESS DIVISION



117073

B-205391

The Honorable John J. Duncan
House of Representatives

DECEMBER 16, 1981

Dear Mr. Duncan:

Subject: Contractors' Use of Foreign Labor on
Federal Contracts (PLRD-82-23)

This report is in response to your October 15, 1981, letter, concerning the Navy's use of small business contractors who allegedly employ foreign labor in the performance of Government contracts outside the United States.

For many years, the Congress by statute and the executive branch by regulation have prescribed various labor standards in Federal procurement. After reviewing pertinent laws, we concluded that none of the activities mentioned by your constituent violate these statutes. Our review and analysis of the statutes, as they apply to the concerns expressed by your constituent, follow. Only the principal statutes are mentioned here.

THE WALSH-HEALEY PUBLIC CONTRACTS ACT (41 U.S.C. 35)

This act requires by contract clause that contractors for supplies in excess of \$10,000 (1) be manufacturers of or regular dealers in those supplies, (2) pay the prevailing minimum wages, (3) not work employees in excess of the maximum daily or weekly hours, (4) observe certain minimum ages for employment, and (5) not permit performance of the contract under unsanitary, hazardous, or dangerous working conditions. The act provides for liquidated damages, contract termination, and a 3-year debarment from Government contracts for violations.

Analysis

This act is limited to supply contracts and does not apply to contracts described by your constituent. Moreover, it would not prevent a contractor from hiring foreign labor.

DAVIS-BACON ACT (40 U.S.C. 276a)

Enacted in 1931, this statute provides for payment of no less than prevailing minimum wages, as determined by the Secretary of Labor, to laborers under construction contracts in excess of

019708

(942113)

\$2,000. Provisions similar to those under the Walsh-Healey Act are provided in the event of violations.

Analysis

This act is not applicable to contracts performed in foreign countries, and therefore, would not apply to an American base overseas.

SERVICE CONTRACT ACT OF 1965 (41 U.S.C. 351)

This statute covers all service contracts in excess of \$2,500, whether advertised or negotiated, and requires the contractor to (1) pay wages not less than those determined by the Secretary of Labor to prevail in the area for the type of work, (2) provide certain fringe benefits, such as hospital care or the equivalent payment, and (3) see that the contract is not performed under unsanitary or hazardous conditions. Violation of the act may result in debarment, contract termination, and withholding of contract funds.

Analysis

This act does not apply since it is limited to contracts within the United States and its territories and expressly excludes U.S. bases and possessions within foreign countries.

THE BUY AMERICAN ACT (41 U.S.C. 10a - 10d)

Enacted in 1933, this statute imposes restrictions on the procurement of foreign supplies and construction materials. The act requires the procurement of domestic raw materials and supplies or domestic manufactured materials and supplies manufactured from domestic raw materials, with exceptions.

Analysis

This act does not address the issue of American or foreign labor, only the issue of American or foreign material. Also, the nationality of the company is not germane to Buy American Act determinations.

- - - -

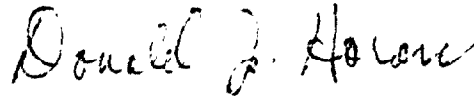
In summary, while many laws have been enacted dealing with labor in Federal procurement, it is permissible for a contractor to use foreign labor in the performance of a Government contract overseas.

Concerning small business size and status for Federal procurement and sales purposes, the Small Business Administration is authorized to make those determinations. Navy procurement

officials at Norfolk, with whom we spoke, advised that the contract award will not be made to the low bidder identified by your constituent until the Small Business Administration certifies that the contractor qualifies as a small business concern.

Copies of this report will be made available to others upon request.

Sincerely yours,

A handwritten signature in cursive script that reads "Donald J. Horan".

Donald J. Horan
Director