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**DECISION**



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

**FILE:** B-201328

**DATE:** January 26, 1981

**MATTER OF:** Request for Advance Decision  
from Army Finance and  
**DIGEST:** Accounting Officer

[Propriety of Army and Air Force withholdings of funds], pursuant to request by Department of Labor, owed contractor to cover underpayment of workers in violation of Service Contract Act, 41 U.S.C. § 351, et seq. (1976), will not be considered since question of applicability of act and propriety of withholdings could be determined by court of competent jurisdiction in suit brought by contractor in United States District Court.

The Finance and Accounting Officer, United States Army Troop Support and Aviation Materiel Readiness Command, St. Louis, Missouri, requests an advance decision in connection with a claim submitted, through counsel, by Harold and Elsie Williams, d/b/a Williams Moving Company (hereafter Williams), for refund of allegedly unearned prompt-payment discounts, plus interest, taken by the Government.

On January 3, 1977, the Army awarded Williams requirement contract No. DAAJ04-77-D-0101 which contained a 50-percent, 20-day, prompt-payment discount provision. By letter of March 2, 1977, to the Base Procurement Officer, the United States Department of Labor (DOL) requested that future payments under the above contract be withheld until \$39,057.22 had accumulated. A labor standards compliance investigation by DOL disclosed that Williams had, in violation of the Service Contract Act, 41 U.S.C. § 351, et seq. (1976), underpaid its workers on contract No. F11623-76-90062 with Scott Air Force Base, Illinois, and contract No. F03601-76-90004 with Blytheville Air Force Base, Arkansas, in the total amount of \$39,057.22, for the period January 1, 1975, to August 27, 1976.

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The letter also advised that legal proceedings had been initiated under the provisions of the Service Contract Act. The Army withheld several payments totaling \$25,997.53 and the balance of \$13,059.69 was withheld by Finance and Accounting Officers at Scott and Blytheville Air Force Bases. The above payments were net after 50-percent discounts had been taken, even though in some instances, according to the Finance and Accounting Officer, discounts were deducted after the 20-day period had elapsed.

On May 15, 1980, DOL authorized the release to the contractor of any funds withheld in excess of \$22,154.66. Army, pursuant to an agreement with DOL and the other Finance and Accounting Offices involved, was directed to retain \$9,094.97 of the \$25,997.53 which it had withheld. A check in the amount of the balance, \$16,902.56, was issued to Williams by the Army. The \$9,094.97, when added to the \$13,059.69 withheld at Scott and Blytheville Air Force Bases, equals \$22,154.66.

Williams' counsel, by letter of June 13, 1980, to the Army, acknowledged receipt of the check, but made demand for additional payments, which is the subject of the request by the Army for an advance decision.

However, the record indicates that Williams has filed suit in the United States District Court for the Eastern District of Missouri to reverse the decision of the Administrative Law Judge (who we assume determined that Williams underpaid its employees in the amount of \$22,154.66) and further claims improprieties by all agencies involved in the withholding of funds.

It is the policy of this Office not to decide issues which are before a court of competent jurisdiction unless, of course, the court requests, expects or otherwise expresses an interest in our decision, which it has not done in the present case. Since the court could consider and make determinations concerning the questions which the Army has requested our Office to answer, it would not be appropriate for our Office

to interject itself, through an unsolicited decision, in the currently ongoing judicial proceeding. See Hudspeth Sawmill Company, B-195810, March 7, 1980, 80-1 CPD 181.

In the circumstance, our Office must decline to consider the request for an advance decision.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the Comptroller General  
of the United States