Proc. I

DECISION

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

9478

FILE: B-191536 DLG 01231 DATE: March 14, 1979

MATTER OF: Carvounis Painting and Remodeling Company

DIGEST:

1. Concealment of underpayments of Davis-Bacon wage rate by submitting payrolls showing compliance was evidence of willful intent to underpay employees warranting debarment, notwithstanding that contractor did not sign certificate of compliance on reverse side of payrolls since certificates of compliance for payrolls covering earlier period of contract performance were signed. This indicates that contractor was aware of requirements of Davis-Bacon Act but, nevertheless, submitted uncertified payrolls for purpose of concealing underpayments.

2. Failure to sign certificate of compliance with Davis-Bacon Act, while perhaps relieving contractor from criminal prosecution for falsification of official Government documents under 18 U.S.C. § 1001 (1976), does not change fact that uncertified payrolls concealed underpayments and misled contracting personnel as to wage rate paid employees, thus indicating willful intent to underpay employees.

3. There was no lack of procedural due process in Davis-Bacon debarment where contractor received written notice of charges and was given opportunity not only to present written evidence, but was afforded opportunity for oral hearing, but declined to submit written evidence or participate in oral hearing.

[Reconsideration of Debarment of ~~Contractors~~ Clients For Violation of the ~~004428~~ Davis-Bacon Act]

By letter of December 14, 1978, with enclosure, counsel for Carvounis Painting and Remodeling Company and its owner, Panagiotis Carvounis (henceforth referred to collectively as Carvounis), requested reconsideration of the April 17, 1978, debarment of his clients for violation of the Davis-Bacon Act, 40 U.S.C. § 276a (1976).

By way of background, there follows a brief history of the events leading up to the debarment. Navy contract No. N62477-74-C-1087, for the exterior painting of apartment buildings at the Marine Corps Base, Quantico, Virginia, was awarded to Carvounis on May 7, 1974. Work on the contract commenced on September 4, 1974. The contract contained a provision, mandated by section 1(a) of the Davis-Bacon Act, 40 U.S.C. § 276a (1976), which requires that laborers and mechanics employed in the performance of the contract be paid a minimum wage rate as determined by the Secretary of Labor. Residential wage decision 74-VA-155 dated March 14, 1974, was included in the contract. Section 3(a) of the Davis-Bacon Act, 40 U.S.C. § 276a - 2(a) (1976), authorizes the Comptroller General to debar for a period of 3 years any firms or persons found to have disregarded their obligations to employees. Additionally, Carvounis was required by section 5.5(a)(3) of title 29 of the Code of Federal regulations (CFR) (the Department of Labor's Regulations) and the contract terms to submit on a weekly basis a certified copy of the firm's payrolls to the contracting agency, the certification to affirm that the payrolls were correct and complete, and that the wage rates were not less than those contained in the wage determination.

In July 1975, three employees who had performed work under the contract complained that they had received no wages for work that they had performed. According to the record, Carvounis did not submit to the contracting agency (the Department of the Navy) in a timely manner those payrolls covering the periods during which the underpayments occurred (February, March and April of 1975). It was not until late 1975, after repeated attempts by the contracting officer to obtain the payrolls, that Carvounis finally submitted

the applicable payrolls. The payrolls that were finally received listed only two of the three employees and indicated that these two employees had received the proper wage rate ($4.50 per hour). Also, the reverse side of the payrolls containing the statement of compliance (certification) was not signed by Carvounis. Carvounis was requested to submit evidence to establish that it had paid these employees. Carvounis did not respond to this request. Despite numerous requests, Carvounis declined to make restitution.

In accordance with usual procedures, the Department of the Navy withheld, from monies owed Carvounis under the contract, an amount ($1,260) sufficient to cover the underpayments and forwarded this amount to the General Accounting Office (GAO). Also, in accordance with established procedures, a labor standards investigation report was forwarded, with a recommendation that debarment sanctions be initiated against Carvounis, to the Department of Labor (DOL) for its consideration. The DOL concluded after a review of the investigation file that the failure by Carvounis to pay the three employees in question constituted a disregard of its obligations to its employees under section 3(a) of the Davis-Bacon Act. By registered letter of July 15, 1977, the Deputy Administrator of the Wage and Hour Division of DOL advised Carvounis in detail of the nature and extent of the labor standards violations charged against Carvounis. The letter also advised Carvounis of an opportunity to rebut these allegations at an informal proceeding pursuant to section 5.6(c) of DOL's regulations. However, Carvounis did not request a hearing or submit any facts in rebuttal or arguments against the debarment action. By letter of November 2, 1977, DOL referred the matter to our Office for final disposition.

Carvounis states that two of the employees submitted complaints that they were not paid their hourly wages at the rate of $7.50 per hour, while the third employee complained that he was not paid at a rate of $8.75 per hour. Carvounis contends that the three employees were not complaining that they were not paid at the $4.50 Davis-Bacon rate but that they were entitled to

a higher wage rate. While it is true that the three employees stated that Carvounis had promised to pay them $7.50 and $8.75 per hour, respectively, all three employees complained that they had not been paid any compensation at all. The alleged failure of Carvounis to pay the three employees the $4.50 per hour rate was the basis for Navy's initial labor standards investigation and the subsequent proceedings before DOL and this Office. The $1,260 withheld from money owed Carvounis under the contract was computed on the $4.50 per hour wage rate. Carvounis was requested to furnish proof that it had paid the three employees. Carvounis failed to furnish proof that it had paid the employees any amount at all. We were aware, at the time we made our determination to debar Carvounis, that the employees in question claimed to have been promised wage rates in excess of the Davis-Bacon rate and that failure to pay the amount in excess of the Davis-Bacon rate was not a violation of the act. Had Carvounis offered convincing proof that it had paid the employees at least $4.50 an hour, there would, of course, have been no debarment.

The next contention by Carvounis is that the sole basis for the debarment determination was that Mr. Carvounis had "falsified" payrolls, i.e., certified as true and correct payrolls which are factually untrue. Carvounis alleges that a member of our legal staff confirmed that "falsification" was the basis for the GAO debarment listing. Carvounis argues that the record contains no payrolls "certified" by Mr. Carvounis or any individual in his employ. First of all, we must take exception to the statement that the sole basis for our debarment of Carvounis was "falsification" of payrolls by Mr. Carvounis. The primary reason for debarring any contractor, or subcontractor, is the willful failure to pay its employees the prescribed Davis-Bacon minimum wage rate. Of course, "falsification" of the payrolls, where there has been an underpayment, will weigh heavily against the violator and is very strong evidence of willful intent. We might also point out that the submission of payrolls containing incorrect information which conceals violations or misleads contracting personnel as to the amount

paid workers can also be convincing evidence of a willful intent, regardless of the fact that the statements of compliance might not have been signed.

We must also take exception to the contention by Carvounis that the record contains no payrolls certified by Mr. Carvounis or any individual in his employ. Payrolls submitted for work performed on the contract during a period in which there were no labor standards violations (September, October, November and December 1974) were certified by an individual named Pete Carvounis who was described as owner of Carvounis Painting & Remodeling Co. We understand that this Pete Carvounis is the same individual as Panagiotis Carvounis. We are of the view that these certified payrolls, submitted in a timely manner, indicate that Mr. Carvounis was fully aware of the obligations under the Davis-Bacon Act. Moreover, we have been advised that prior to the present contract, Carvounis had performed other Government contracts on which it had complied with the Davis-Bacon requirements. While Carvounis argues that its act amounted to nothing more than an inadvertent or unintentional disregard of the act for which the very serious sanction of debarment should not be imposed, we believe that the record establishes that the submission of uncertified payrolls indicating that the employees had been paid the proper wage rate, when in fact they had not, was not only a deliberate attempt to conceal the true situation from the Government, but is evidence of a willful intent to underpay these employees in violation of the Davis-Bacon Act.

Carvounis also argues that the evidentiary and procedural shortcomings of the present debarment provide more than ample grounds for the removal of its name from the debarred bidders list. The courts have held that a firm or individual has the right not to be debarred except in an authorized and procedurally fair manner and that the power to debar must be exercised in accordance with "accepted basic legal norms," i.e., due process must be accorded the firm or individual. Gonzalez v. Freeman, 334 F.2d 570 (1964). The court in Schlesinger v. Gates, 249 F2d 111 (1957), held that the regulations involved in that case, which did not provide

for an oral hearing but only for notice and an opportunity to present evidence, were in substantial compliance with the requirement of "accepted basic legal norms." In the present case, not only did DOL give Carvounis notice of the specific charges against it and an opportunity to present a written rebuttal, but DOL afforded an opportunity for an oral hearing. Carvounis chose not to avail itself of either opportunity. In Fermont Div. of Dynamics Corp. of America v. Seamans, 12 Gov't. Ctr. 277, DCDC (1970), referred to by Carvounis in support of its contention, there were procedural inadequacies. However, there were none in the present case. DOL conformed to its regulations by giving Carvounis notice, an opportunity to submit written evidence and an opportunity for an oral hearing. The fact that Carvounis chose not to submit written evidence or request an oral hearing is not a basis for concluding that the procedures were inadequate. This being the case, we do not agree with the argument by Carvounis that the court's rationale in Art-Metal-U.S.A., Inc. v. Solomon, Civil Action No. 78-1660, DCDC, October 6, 1978, is applicable to the present case. In the Art-Metal case the court held that the termination for convenience of the Government of a contract awarded by the General Services Administration (GSA) to Art-Metal and the holding up of awards on four other contracts, on three of which Art-Metal was the low bidder, amounted, in essence, to a blacklisting or suspension of Art-Metal without the procedural safeguards mentioned above. However, as pointed out above, Carvounis was given notice and an opportunity not only to present written evidence but to have an oral hearing. Moreover, unlike the present case, there was no showing in the Art-Metal case that Art-Metal had committed any wrongdoing or violated any statutory requirement.

For the above reasons, we are of the view that our Office had a sufficient basis for the debarment of Carvounis. Therefore, the request by Carvounis to be removed from the debarred bidders' list is denied.

Deputy Comptroller General
of the United States