

DECISION

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

*Griffin
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FILE: B-217327**DATE:** June 7, 1985**MATTER OF:** J & B Painting Co. - Davis-Bacon Act
Debarment**DIGEST:**

The Department of Labor recommended debarment of a contractor under the Davis-Bacon Act because the contractor had failed to pay the minimum wages required by the Act and had falsified certified payroll records. Based on our independent review of the record in this matter, we conclude that the contractor disregarded its obligations to its employees under the Act. There was a substantial violation of the Act in that the underpayment of employees and falsification of records was intentional. Therefore, the contractor will be debarred under the Act.

The Assistant Administrator, Employment Standards Administration, United States Department of Labor (DOL), by a letter dated June 27, 1984, recommended that J & B Painting Co. (J & B), John Belivanakis, owner, and Sandy Belivanakis, Secretary, be placed on the ineligible bidders list for violations of the Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-5 (1982), and of the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 327-332 (1982), which constituted a disregard of obligations to employees under these Acts. We concur in DOL's recommendation.

J & B performed work under two contracts (046-81-2655 and DE-AC05-760R01156-S-1074), with the Department of Housing and Urban Development, and the Department of Energy, doing painting and other related work. These contracts were subject to the Davis-Bacon Act requirements that certain minimum wages be paid. Further, pursuant to 29 C.F.R. § 5.5(a) (1984), the firm was to submit payroll records certified as to correctness and completeness.

The DOL found as a result of an investigation that employees were not paid the minimum wages required pursuant to the Davis-Bacon Act. Further, DOL found that certified payrolls were falsified to conceal the

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minimum wage violations, and that the contractor did not pay its employees proper overtime compensation. The DOL informed us that a certified letter dated May 25, 1984, was sent to J & B advising in detail of the violations with which it was charged, and that debarment was possible. Further, J & B was given an opportunity for a hearing on the matter before an administrative law judge in accordance with 29 C.F.R. § 5.12(b) (1984). The DOL reported to us that the letter to them was returned by the U.S. Postal Service with the notation "not deliverable as addressed - unable to forward." After reexamining the record, DOL found that J & B violated the Davis-Bacon Act without any factors militating against debarment. Therefore, DOL recommended that J & B Painting Co., John Belivanakis, owner, and Sandy Belivanakis, Secretary, be placed on the ineligible bidders list for violations of the Davis-Bacon Act which constituted a disregard of obligations to employees under the Act.

The Davis-Bacon Act provides that the Comptroller General is to debar persons or firms whom he has found to have disregarded their obligations to employees under the Act. 40 U.S.C. § 276a-2. In Circular Letter B-3368, March 19, 1957, we distinguished between "technical violations" which result from inadvertence or legitimate disagreement concerning classification, and "substantial violations" which are intentional as demonstrated by bad faith or gross carelessness in observing obligations to employees with respect to the minimum wage provisions of the Davis-Bacon Act. Falsification of payroll records is a basis for debarment under the Davis-Bacon Act. See, e.g., Bryant Paint Contracting, Inc., B-217337, May 23, 1985.

Based on our independent review of the record in this matter, we conclude that J & B disregarded its obligations to its employees under the Davis-Bacon Act. There was a substantial violation of the Davis-Bacon Act in that the underpayment of employees was intentional as demonstrated by J & B's bad faith in the falsification of certified payroll records. Further, J & B failed to pay its employees proper overtime compensation.

Therefore, J & B Painting Co., John Belivanakis, owner, and Sandy Belivanakis, Secretary, will be included on a list to be distributed to all departments of the Government. Pursuant to statutory direction (40 U.S.C. § 276a-2), no contract shall be awarded to them or to any

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firm, corporation, partnership, or association in which they, or any of them, have an interest until 3 years have elapsed from the date of publication of such list.


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Associate General Counsel