

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

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FILE: B-217329**DATE:** June 7, 1985**MATTER OF:** Morgan Plumbing and Heating -
Davis-Bacon Act Debarment**DIGEST:**

The Department of Labor recommended debarment of a subcontractor under the Davis-Bacon Act because the subcontractor 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 subcontractor disregarded its obligations to its employees under the Act. There was a substantial violation of the Act in that the underpayment of employees was intentional. Therefore, the subcontractor will be debarred under the Act.

The Assistant Administrator, Employment Standards Administration, United States Department of Labor (DOL), by a letter dated June 19, 1984, recommended that the names Morgan Plumbing and Heating (Morgan), and Ernest Morgan individually and as owner, be placed on the ineligible bidders list for violations of the Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-5 (1982), which constituted a disregard of obligations to employees under the Act. For reasons that follow, we concur in DOL's recommendation.

Morgan performed work under contract DACA 51-82-C-0068, with the United States Army Corps of Engineers doing plumbing and other related work. This contract was 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 minimum wage violations. The DOL informed us that a certified letter dated April 5, 1984, was sent to Morgan advising in detail of the violations with which it was charged,

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and that debarment was possible. Further, Morgan 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 while the record indicates that the letter was received, no hearing was requested. After reexamining the record, DOL found that Morgan violated the Davis-Bacon Act without any factors militating against debarment. Therefore, DOL recommended that the names Morgan Plumbing and Heating, and Ernest Morgan individually and as owner, 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. We concur in this recommendation.

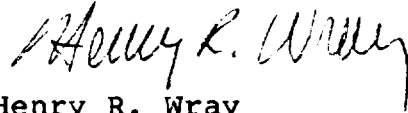
The Davis-Bacon Act provides that the Comptroller General is to debar persons or firms whom he has found to have disregarded their obligations to employees under the Act. 40 U.S.C. § 276a-2. In Circular Letter B-3368, March 19, 1957, we distinguished between "technical violations" which result from inadvertence 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 Morgan, and Ernest Morgan individually and as owner of Morgan, disregarded their obligations to their 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 Morgan's bad faith in the falsification of certified payroll records.

Therefore, the names Morgan Plumbing and Heating, and Ernest Morgan individually and as owner of Morgan Plumbing and Heating, will be included on a list to be distributed

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to all departments of the Government, and, pursuant to statutory direction (40 U.S.C. § 276a-2), no contract shall be awarded to them or to any 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.



Henry R. Wray
Associate General Counsel