

**DECISION**

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

Graham  
P.M.I.  
31398

**FILE:** B-217330**DATE:**

June 7, 1985

**MATTER OF:** Family Construction Company - Davis-Bacon  
Act Debarment**DIGEST:**

The Department of Labor recommended debarment of a contractor for violations of the Davis-Bacon Act because the contractor had underpaid employees and maintained payroll records that were not complete as required. 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 was grossly careless, coupled with an indication of bad faith. 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 May 3, 1984, recommended that the names Family Construction Company (Family Construction), Edwin Green, and Sylvia Green, 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. We concur in DOL's recommendation.

Family Construction performed work under contract YA-511-CT3-240029 with the United States Bureau of Land Management constructing a fence line. 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 contractor was to submit payroll records certified as to correctness and completeness, specifying for each worker--among other things--classifications of work performed, daily and weekly hours worked, rates of pay, and wages paid.

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

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that Family Construction's payrolls were certified by Edwin Green and Sylvia Green to be accurate and complete; yet those payrolls failed to show the required classification of work performed, daily and weekly hours worked, rate of pay, and wages paid. The DOL informed us that by certified letter dated April 4, 1984, Family Construction was given constructive notice at its last known address in detail of the violations with which it was charged, and that debarment was possible. Further, Family Construction 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 these letters were returned by the United States Postal Service marked "Box closed due to non-payment," and that further attempts to locate the contractor were unsuccessful. After reexamining the record, DOL found that Family Construction violated the Davis-Bacon Act without any factors militating against debarment. Therefore, DOL recommended that Family Construction Company, Edwin Green, and Sylvia Green, 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.

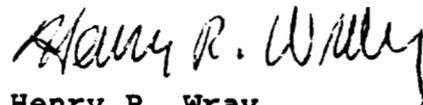
The Davis-Bacon Act provides that the Comptroller General is to debar persons or firms whom he has found to have disregarded their obligations to employees under the Act. 40 U.S.C. § 276a-2. In Circular Letter B-3368, March 19, 1957, we distinguished between "technical violations" which result from inadvertence 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.

Based on our independent review of the record in this matter, we conclude that Family Construction Company, Edwin Green, and Sylvia Green, 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 grossly careless as demonstrated by Family Construction's submission

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of payrolls certified by Edwin Green and Sylvia Green to be accurate and complete; yet those payrolls failed to show the required classification of work performed, daily and weekly hours worked, rates of pay, and wages paid. Further, they did not cooperate in the investigation, which is an indication of bad faith.

Therefore, the names Family Construction Company, Edwin Green, and Sylvia Green, will be included on a list to be distributed 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