

DECISION

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

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8(m.)

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FILE: B-217705

DATE: July 24, 1985

MATTER OF: Danham Roofing Co., Inc. - 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 December 24, 1984, recommended that the names Danham Roofing Co., Inc., (Danham Roofing), Dan Hamner individually and as President, and Mary L. Reagan individually and as Secretary/Treasurer, 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.

Danham Roofing performed work as a subcontractor under contract No. DAKF06-82-C-0196 for the Department of the Army at Fort Carson, Colorado, in Colorado Springs, Colorado, doing roofing 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 contractor was to submit payroll records certified as to correctness and completeness.

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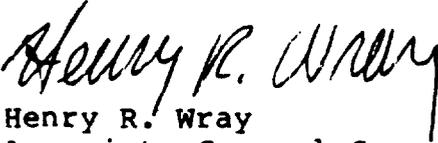
The DOL found as a result of an investigation that employees were not paid the minimum wages required pursuant to the Davis-Bacon Act, and were not paid required overtime compensation under the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 327 to 332 (1982). Additionally, the certified payrolls were falsified. The DOL informed us that by certified letter dated June 15, 1984, Danham Roofing was given notice in detail of the violations with which it was charged, and that debarment was possible. Further, Danham Roofing was given an opportunity for a hearing on the matter before an administrative law judge in accordance with 29 C.F.R. §§ 5.11(b) and 5.12(b) (1984). The DOL reported to us that while this letter was received, no hearing was requested.

After reexamining the record, DOL found that Danham Roofing violated the Davis-Bacon Act without any factors militating against debarment. Therefore, DOL recommended that the names Danham Roofing Co., Inc., Dan Hamner individually and as President, and Mary L. Reagan individually and as Secretary/Treasurer, 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 were 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., Metropolitan Home Improvement Roofing Co., Inc., B-215945, January 25, 1985.

Based on our independent review of the record in this matter, we conclude that Danham Roofing disregarded its obligations to 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 Danham Roofing's bad faith in the falsification of certified payroll records.

Therefore, Danham Roofing Co., Inc., Dan Hamner individually and as President, and Mary L. Reagan, individually and as Secretary/Treasurer, will be included on a list of ineligible bidders 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 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