

DECISION

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

McCain
P. 11-7

FILE: B-217940**DATE:** September 19, 1985**MATTER OF:** Cal Walt's Incorporated a/k/a K A & B
Industries, Inc.**DIGEST:**

The Department of Labor recommended debarment of a contractor under the Davis-Bacon Act. Based on our independent review of the record, we conclude that the contractor committed substantial violations of the Act in that the underpayments of employees were grossly negligent as demonstrated by the contractor's submission of certified payroll records which were inaccurate and incomplete. Furthermore, the contractor committed other substantial violations by inducing three employees to sign releases indicating that certain back wages had been paid when these back wages had not been paid. Therefore, we order debarment of the contractor and payment of the funds on deposit with our Office to the worker involved.

The Deputy Administrator, Employment Standards Administration, United States Department of Labor (DOL), by letter dated June 10, 1982, recommended that Cal Walt's Incorporated a/k/a K A & B Industries, Inc. (Cal), and Waldo E. Slusher, individually and as the only known officer of Cal, 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 the reasons that follow, we concur in DOL's recommendation.

Cal performed work as a subcontractor doing construction and related work under six contracts with the Department of the Navy (Contract Nos. N62474-79-C-5334, N62474-78-C-0745, N62474-77-C-2023, N62474-77-C-2352, N62474-79-C-5251, and N62474-77-C-2996). 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 contractor was required to pay employees at least once a week and to submit payroll records certified as to correctness and completeness.

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B-217940

The DOL found as a result of an investigation that employees of Cal who performed work on each of the above contracts were paid less than the applicable prevailing wage rates for the classifications of work performed. The record indicates that the prime contractors have paid the employees except for one employee. The back wages due that employee (\$281.76) were forwarded to our Claims Group. Furthermore, the certified payrolls which the firm submitted were inaccurate and incomplete. In this regard, a number of employees were misclassified. Also, several employees were paid hourly rates lower than the hourly rates reported on these payrolls. One employee was omitted from the certified payrolls. For certain employees, the certified payrolls did not reflect all hours worked. Moreover, the firm induced three employees to sign back wage releases indicating that a total of \$845 had been paid as a result of prior investigative work by the Department of the Navy on Contract No. N62474-77-C-2352, but the investigation revealed that these back wages had not been paid.

The record indicates that the DOL notified Cal of the violations with which it was charged by certified letter addressed to Waldo E. Slusher, and that DOL offered it an opportunity to rebut the allegations at an informal proceeding under the then applicable regulations. The DOL reported to us that while the record indicates that the letter was received, Cal did not respond.

After reexamining the record, DOL found that Cal violated the Davis-Bacon Act without any factor militating against debarment. Therefore, DOL recommended that Cal, and Waldo E. Slusher, individually and as the only known officer of Cal, 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 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 which constitute 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 Cal disregarded its obligations to its employees under the Davis-Bacon Act. There were substantial violations of the Davis-Bacon Act in that the underpayments of employees were grossly careless as demonstrated by Cal's submission of certified payroll records which were inaccurate and incomplete. Furthermore, Cal committed other substantial violations by inducing three employees to sign back wage releases indicating that a total of \$845.64 had been paid as a result of prior investigative work by the Department of the Navy when actually back wages had not been paid. See Leonard Green and Associates, Inc., B-216864, August 13, 1985; Family Construction Company, B-217330, June 7, 1985, 64 Comp. Gen. ____.

Therefore, we order that Cal Walt's Incorporated a/k/a K A & B Industries, Inc., and Waldo E. Slusher, individually and as the only known officer of Cal Walt's Incorporated a/k/a K A & B Industries, Inc., 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. We also order that the funds on deposit with our Office be disbursed to the employee involved in accordance with established procedures.



Henry R. Wray
Associate General Counsel